

## **REMARKS**

The Office Action mailed September 2, 2004 and references cited therein have been reviewed. Applicants acknowledge and confirm the election of the claims drawn to a method of making a sandwich classified in class 426, subclass 275. Accordingly, Applicants have withdrawn claims 13-24 which are drawn to a sandwich product. Applicants have also amended claims 25, 29-30, 33-40, and added new claims 43 and 44.

## **THE SECTION 112 REJECTION**

Claims 39-40 were rejected under 35 U.S.C. 112(2) as being indefinite for failing to particularly point out and distinctly claim the invention. Specifically, the Examiner objected to the language "wherein at least partially cutting off." The Examiner stated that it was unclear what was being cut off. Applicants have amended claims 39 and 40 to clarify the scope of the claims. Applicants submit that amended claims 39 and 40 are in proper form pursuant to 35 U.S.C. 112.

Claims 26, 31-32 and 33-40 were rejected under 35 U.S.C. 112(1) as failing to comply with the written description requirement. The Examiner asserted that such claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

The Examiner asserted that the water activity limitation in claim 26 was not included in the originally filed specification. Although Applicants disagree with this rejection, claim 26 has been amended to track language set forth in the originally filed Abstract. Applicants submit that claim 26 is in proper form pursuant to 35 U.S.C. 112.

The Examiner asserted that the spacing limitation for the depressions in claims 31 and 32 was not included in the originally filed specification. Applicants disagree. Page 4 lines 3-10 discuss

the cutting cylinder having a notched end with notches spaced approximately every 1/8 inch. This section of the specification also discloses that these notches form depressions 28. (See also Page 4, lines 21-24, Figures 3 and 5). As such, this spacing limitation for the depressions is supported by the originally filed specification. Applicants submit that claims 31 and 32 are in proper form pursuant to 35 U.S.C. 112.

The Examiner asserted that the limitations of claims 33-40 were not included in the originally filed specification. Applicants disagree. The Examiner objected to the claims 33-34 for including the language that the platen has a central portion and a pressure surface. Applicants admit that the phraseology used in the claims is not used in the specification; however, the claim language is supported by Figures 1 and 2 and page 4, line 14 through page 5, line 13. As shown in Figures 1 and 2, bread portion 20 is positioned on plate 12. The outer peripheral edge of bread portion 20 does not extend over the edge of plate 12. As such, bread portion 20, as illustrated in Figures 1 and 3, must be positioned in a central region of plate 12. The fillings 30a, 30b and 32 are disclosed as being positioned relative to the bread slices 20, 22 such that when the bread slices are cut and sealed, the filling is not in the sealing area (Page 4, line 16 through page 5, line 6; Figures 1, 2 & 4). As illustrated in Figures 1 and 2, the fillings 30a, 30b and 32 are positioned inwardly of the peripheral edge of the bread slices 20, 22. The location of the peripheral edge of the fillings 30a and 30b relative to plate 12 is defined in the claims as the "central portion" of the platen. The specification discloses the cutting cylinder penetrates the bread slices and forms a sealed region in the bread slices that is absent the fillings (Page 4, lines 16-22; Page 5, lines 5-6; Figures 2 & 4). Figure 2 also discloses that the cutting cylinder contacts plate 12 at a location that is outside the peripheral edge of fillings 30a and 30b. This location where the cutting cylinder contacts plate 12 is defined in the claims as the "pressure surface" of the platen. This "pressure surface" surrounds the "central

portion” of the platen. Applicants submit that Figure 2 in-and-of-itself supports the limitation defined in claims 33 and 34.

Although Applicants submit that the limitations set forth in claims 33-40 are supported by the originally filed specification, applicants have amended claims 33-40 to better define the scope of the claims. Applicants submit that all the pending claims are in proper form pursuant to 35 U.S.C. 112.

### **THE SECTION 103 REJECTION**

Claims 25-42 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kaiser in view of Shideler.

Kaiser is excerpts from a cookbook containing a compilation of more than 100 recipes. The cookbook also mentions, but does not describe, a “Tartmaster” and a “Krimpuk Sealer.” These devices are allegedly used to form the various products mentioned in the cookbook. The construction and structure of the “Tartmaster” are not discussed in the cookbook. There is also no edge structure of any product disclosed in Kaiser. The resulting structure of a sandwich formed by the “Tartmaster” can only be inferred. Kaiser can only suggest process use of an illustrated device, without explanation of its structure or what results in its use. Kaiser does not explain how the ravioli edge differs from the edge of a tart formed from bread. Kaiser merely illustrates the same edge for both products.

Shideler is an excerpt from a 1994 article in the Wichita Eagle. The full article includes 41 tips for parents of school age children to “smooth the way” through the first week of school. One of the many tips mentioned in the article is how to prevent the bread slices of a peanut butter and jelly sandwich from becoming soggy.

The examiner relied solely on Kaiser and Shideler to support a finding that the method of

forming a crustless sandwich and the resulting structure of the sealing region defined in the pending claims is taught, or at least inferred from Kaiser and Shideler. Shideler does not include any disclosure, teaching or suggestion concerning the structure of a seal of a sandwich. In addition, Kaiser does not include any disclosure, teaching or suggestion concerning the structure of a seal formed by a “Tartmaster” or “Krimpuk Sealer.” The examiner’s reliance on inferred or assumed teachings of a method of using a “Tartmaster” and the resulting compression edge seal formed by use of the “Tartmaster” is not supported by Kaiser. The declarations of Leon Levine, Malcolm Cooke and Brian Turung, which are enclosed herein as Exhibits A-C, confirm that a sandwich formed by the “Tartmaster” forms a seal edge of a homogeneous amorphous mass of bread or dough, and not the sealing region defined in the pending claims.

Kaiser and Shideler also do not disclose, teach or suggest to one skilled in the art a plurality of closed depressions in the sealing region used to increase the holding action at the sealing region to prevent the two cut bread slices from inadvertently separating. The function of any structure on the tarts, pasta or sandwiches formed by the “Tartmaster” or “Krimpuk Sealer” is absent from Kaiser.

Kaiser and Shideler also do not disclose, teach or suggest to one skilled in the art, a sandwich having a specific type of sealing region and a centered filling formed of a layer of second food spread encapsulated inside the outer peripheries of a first and third food spread. The concept of forming any type of encapsulated filling is not taught or implied from the combined teachings of Kaiser and Shideler.

Kaiser and Shideler also do not disclose, teach or suggest one skilled in the art the packaging of a sandwich in an airtight package for long term storage. Kaiser merely discloses that a sandwich can be “wrapped” and frozen for up to two weeks prior to consumption. The suggestion or inference

from this disclosure that a sandwich should or could be packaged in an airtight film is not supported by Kaiser.

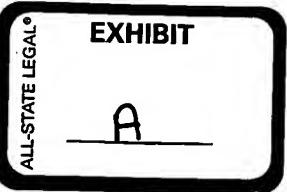
The evidence of secondary considerations as set forth in the Declaration of Steven T. Oakland dated 7/16/01 (Exhibit D); Declaration of Steven T. Oakland dated 2/28/02 (Exhibit E); Declaration of Steven T. Oakland dated 3/21/02 (Exhibit F); and Declaration of John Purcell (Exhibit G) also support the patentability of the pending claims.

Applicants submit that the pending claims are patentably distinct from the cited art of record. A notice of allowance is respectfully requested.

Respectfully submitted,  
FAY, SHARPE, FAGAN, MINNICH & MCKEE

By: \_\_\_\_\_

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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kretchman et al  
For : "Sealed Crustless Sandwich"  
Serial No. : 90/005,949  
Filed : March 9, 2001  
Patent No. : 6,004,596  
Examiner : George C. Yeung  
Group Art Unit : 1761  
Our Docket No. : SMA-12271 RX

**DECLARATION OF LEON LEVINE**

I, Leon Levine, being warned that false statements and the like are punishable by fine or imprisonment or both under 18 U.S.C. § 1001 hereby declares that all statements made of his own knowledge are true and any statements made on information and belief are believed to be true.

1. Attached hereto as Exhibit A is my resume showing my expertise in the field of processing of food items for commercial retail marketing.

2. I have reviewed and read several documents I have been informed were relied upon by the United States Patent and Trademark Office (PTO) in reexamining Kretchman 6,004,596 (the '596 patent). In addition, I have reviewed new claims 43-52 (Exhibit B) and the specification of the '596 patent.

3. The crustless sandwich defined by the combination of elements in claims 43-52 is not taught or suggested by any prior art I have considered in my study of this matter.

4. In food technology, bread is a baked starch product having an outer crust and a body containing air bubbles giving the product a known texture. When bread is highly compacted, the air bubbles are removed and the bread texture is changed into a tougher consistency. This phenomena was used in my analysis of prior art cited by the PTO in the reexamination of the '596 patent.

5. The description of the crustless bread in the '596 patent defines an outer surface-to-surface seal caused by compression of the outer rim of one bread portion onto the outer rim of the other bread portion. In the patent this rim is a circular perimeter. This compression provides a surface seal between the bread portions. To increase the holding force, the '596 patent uses spaced depressions 28. These cause a reduction in the air bubbles at only the pressure points and does not appreciably distort the surface seal. Such sealing action is shown in the sketch labeled FIG I of attached Exhibit C. The surface-to-surface seal is the flat, dashed line. The pressure points are shown in cross-hatching. These spaced pressure points prevent the crimped edge 26 from separating. (Col. 3, line 20) As shown in Figure 3 of the '596 patent, the compression seal does not join the bread into a mass but leaves the two individual slices of bread essentially intact as shown. This illustrated result indicates that the bread is not crushed together. This compression seal gives a sealed edge structure as shown in Fig. IV of Exhibit C. A surface-to-surface seal around the central filling is best shown in Figure 4 of the '596 patent. By using the surface-to-surface edge seal, the perimeter edge of the crustless sandwich is held together without highly compacting the total outer perimeter. Such compacting of the bread

would give a tough consistency and compact the bread edges together into a single mass of dough. This would not be consistent with an objective of forming a product considered by the eater as a conventional sandwich.

6. I have studied Caveza 5,387,149 (the '149 patent) relating to a single layer of dough from a single slice of bread rolled flat to form a dough. The compacted bread is folded over and sealed by two undulating members. The '596 patent includes a flat sealed surface as shown in FIG. I of Exhibit C. In a second version, there are spaced pressure points. However, the seal joint in the '149 patent is undulating and compacted into a dough-like mass. This procedure drastically increases the length of the sealing joint line to stretch the dough-like mass, thus further converting the structure from normal bread consistency required for a "sandwich" to a compacted layer of dough-like material. The undulating, stretched seal line is like the joint of a pie dough crust. Such joint is not remotely similar to the crimped edge of the '596 patent. It is not like a "conventional sandwich." If one were to use the '149 patent disclosure, there would be no construction of a surface-to-surface edge seal as shown in Figure 4 of the '596 patent. Such sealed joint of compacted bread is technically different in structure and result from the sandwich of the '596 patent.

7. I have studied Funabashi 4,608,918 (the '918 patent), where a blade 2 cuts the crust from two stacked slices of bread. A shoulder 3 seals the cut bread, as shown in Figure 4 of the '918 patent. This drawing shows an outer periphery where the two layers of bread are joined by a force that compacts the layers and removes any distinction of the two bread portions. The bread remains intact in the sandwich shown in Figure 3 of the '596 patent. There is a reason for using a periphery compression operation. Since the height of shoulder 3 from the end of blade 2

is fixed, bread layers having different thickness and different sealing capabilities (by the different moisture contents), demand the bread layers be highly compacted. The shoulder can not operate separately from the blade, as disclosed in the '596 patent. This allows the '596 patent to cut and then surface-to-surface seal the perimeter area of the bread layer by vertical compression with the force that can be tailored for each particular sets of bread layers. The perimeter seal of the '918 patent is completely different from the perimeter seal of the '596 patent, by technical necessity. To assure a holding joint when the shoulder is at a fixed height, the bread must be compacted together like the crust of a pie. The results of this procedure is shown in FIG. III of Exhibit C. The cross-hatching depicts a mass of bread with the air forced out to mold the bread together like a "dough ball." This is the process disclosed in the '918 patent. If this compacted perimeter were frozen, it would become brittle and could even crack. Further, the mouth feel of a compacted perimeter is inconsistent with expectations for a conventional peanut butter and jelly sandwich. The result of a process as disclosed by the '918 patent is shown in FIG V of Exhibit C. The structure has no bread joint at the sealing surface. The bread is compacted into leather-like consistency.

The seal at the perimeter of the '918 patent is not the same as the perimeter seal in the attached claims (Exhibit B) or a sandwich as disclosed in the '596 patent. There would be no reason, suggestion or motivation to change the seal of the '918 patent into the seal defined in the attached claims. Indeed, the '918 seal may be considered necessary when using a fixed shoulder height.

8. I have studied Sollerud 3,782,270 (the '270 patent). A reproduction of Figure 5, previously marked "Exhibit 12", is attached hereto as Exhibit D. The "food unit" has a squeezed

off line contact seal. A line contact cuts the bread crust from the "unit." The seal is not formed by two surfaces compressed together around the periphery of previously cut bread slices. There is no compression of the perimeter area in forming a surface-to-surface contact seal. This squeeze off line joint may or may not lock the bread portions together. Indeed, it may not even cut the bread crust off cleanly. Clearly, the squeezed off edge is not like the perimeter edge seal of the '596 patent. This line contact joint is distinguished from the surface-to-surface seal of the attached claims. There is no way to make spaced depressions when using the cutting equipment of Sollerud 3,782,270. This cutting equipment could not make the patented seal shown in Exhibit E. Use of the squeeze off cut joint of the '270 patent could not make the seal of the '596 patent. Again, the bread at the cut joint would be compressed without air bubbles. This is different from the concept of the '596 patent. If the two matching surfaces used to cut the bread are not exactly machined, the bread will not be cut away.

9. In Exhibit E, the crustless "sandwich" of the '596 patent is shown to have a crimped perimeter edge with a surface-to-surface compression seal. The seal has a width a. To increase the holding force of the joint, spaced depressions in the top bread are used. Not one of the patents discussed herein disclosed such surface-to-surface compression seal of the perimeter of bread layers. Each patent has a different sealing procedure. There is no suggestion, reason or motivation to abandon the structure of Sollerud, Funabashi or Caveza and replace the disclosed prior art joint with the perimeter seal of Exhibit E reproduced from Figure 4 of the '596 patent.

10. Exhibit E also discloses a jelly layer encapsulated by two peanut butter layers with a perimeter surface-to-surface seal with a width b. The structure encapsulates the jelly and isolates the jelly from the outer surface-to-surface seal of bread. These two perimeter

surface-to-surface seals constitute the combination of the attached claims. Even if a person skilled in the art of making retail food items from bread or dough replaced the joint in Sollerud, Funabashi or Caveza with the perimeter seal of the '596 patent, which is not suggested or based upon a technical reason, the crustless sandwich would not have the claimed peanut butter and jelly construction shown in Exhibit E and defined in the attached claims.

11. In my opinion, to duplicate the crustless sandwich shown in Exhibit E and defined in the attached claims, a person skilled in this art would have to have the claims as a guide.



LEON LEVINE

Date: Feb 28, 2002

City: Albuquerque, NM

RESUME/CV

Leon Levine  
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Albuquerque, New Mexico 87111

Education

BSChE - City College of New York  
MSChE - City University of New York  
PhD Bio/Ag Eng(expected, 2002) - Purdue University

Additional graduate studies in electrical engineering  
at the University of Minnesota.

Professional Activities

American Institute of Chemical Engineers  
Institute of Food Technologists  
American Association of Cereal Chemists  
Participant in IFT Workshop on Research Needs - 1984  
Industrial Representative on Natick Laboratories'  
Demonstration Project for Production of Military  
Rations - 1985  
Chairman of Technical Session, Minnesota AIChE, 1987  
Chairman of Symposium on Food Process Scale-up, and  
Dough Processing Operations, National Meetings of  
AIChE, 1987  
Candidate for 2nd Vice Chairman of the Food,  
Pharmaceutical, and Bioengineering Division of the  
AIChE, 1987, 1988.  
Chairman of Technical Symposium on Food Extrusion and  
Drying, COFE, Chicago, 1991  
Chairman of Technical Symposium on Food Engineering,  
IFT, Dallas, 1991  
Chairman of Technical Symposium on Food Engineering,  
Food Focus, AACC, Minneapolis, 1991  
Chairman of Technical Symposium on Unit Operations  
Based on Mechanical and Thermal Energy, Meeting of  
Research and Development Associates for Military  
Food and Packaging Systems, Boston, 1991.  
USDA Value Added Processing, Reviewer, 1993, 1997  
Chairman, International Extrusion Symposium, Sydney,  
Australia, 1993  
Chairman of Technical Symposium Pilot Plants and  
Scale Up, COFE, Chicago, 1995  
Editorial Board, Journal of Food Process Engineering,  
1994-  
Editorial Board, Journal of Food Engineering, 1995-  
Quarterly columns on food engineering have appeared  
Cereal Foods World, 1987 - .

Honors

"Young Chemical Engineer of the Year", 1978,  
Minnesota Section of the American Institute of  
Chemical Engineers.

Seligman-APV Lecturer, SCI, 1996

Listed in "Who's Who in Technology", 1984

Listed in "Who's Who in Science & Engineering, 1993

Teaching and Related Experience

"Food Process Engineering" (senior and graduate level course) was taught at the University of Minnesota, Department of Food Science and Nutrition, Spring Quarter, 1985 and Winter Quarter, 1986

For most of 25 years in the food industry a significant fraction of efforts and responsibilities have been to train recent engineering and food science graduates.

Since 1989, the following short courses that I direct and teach have been scheduled by Rutgers University:

"Selected Topics in Food Engineering"

"Food Engineering for Non-engineers"

"Solving Problems in Food Process Scale-up"

Since 1988, the American Association of Cereal Chemists schedules the following short course that I direct and teach:

"Food Extrusion"

Since 1995, The American Institute of Baking has offered the follow course for which I am part of the faculty

"Process Engineering for Dough Systems"

Various versions of these course are regularly taught to private clients.

In addition, I regularly guest lecture and periodically participate in graduate and undergraduate seminars at several universities.

Papers, Publications, and Patents

"The Adsorptive Bleaching of Vegetable Oils", presented in 1972 at the national meeting of The American Oil Chemists Society, New Orleans.

"Estimating Output and Power of Food Extruders", presented in 1981 at the national meeting of The American Institute of Chemical Engineers, Detroit. Published in The J. of Food Proc. Eng. June 1983.

"Throughput and Power Consumption of Dough Sheeting Rolls", presented in 1983 at the national meeting of The American Institute of Chemical Engineers, Denver. Published in The Journal of Food Process Engineering, June 1985.

"Automatic Control of Moisture in Food Extruders", presented in 1984 at the national meeting of The American Institute of Chemical Engineers, San Francisco. Published in The Journal of Food Process Engineering, September 1985.

"Simplified Models for Estimating the Operating Characteristics of Food Extruders", presented in 1984 at the national meeting of The American Institute of Chemical Engineers, San Francisco. Published in Biotechnology Progress, June 1985

"A Correlation for Heat Transfer Coefficients in Food Extruders" has been published in Biotechnology Progress, September, 1986.

"Food Process Scale-up" was presented at a special session of the Food & Dairy Expo, Atlanta, October, 1985. This presentation was sponsored by The American Society of Agricultural Engineers, Atlanta.

"Industrial Needs for Scale-up and Design of Extruders" was presented, in March 1986 at a symposium entitled, "Extrusion Cooking and Rheology of Foods", sponsored by the Institute of Advanced Food Research of Rutgers.

"Some Aspects of the Dynamic Behavior of Foods Extruders" was presented in November, 1985 at the national meeting of The American Institute of Chemical Engineers, Chicago, and has been published in Biotechnology Progress, December, 1987.

"Some Aspects of the Behavior of Starved Extrusion Screws" was be presented at the national meeting of the American Institute of Chemical Engineers, Boston, August, 1986, and has been published in Biotechnology Progress, December, 1987.

"Introduction to Machine Vision Applications in Food Processing" was presented at the annual meeting of the Wisconsin Food Processor Association, in Madison, Wisconsin, March, 1987

"Overview of Vision Technology" was presented at the at the August, 1987 meeting of the AIChE, in Minneapolis, Minnesota

"Coming to Grips with Rheology" was published in Viscous Products, October, 1986

"An Introduction to the Measurement of Viscosity" was published in Viscous Products, February, 1987.

"Comparison of Mathematical Models for Dough Being Sheeted Through Rolls", was presented at the August, 1987 meeting of the AIChE., in Minneapolis, Minnesota

"Elementary Concepts in Extruder Performance" was presented at the AACC short course on extrusion in San Antonio, May, 1988.

"Scale-up of Food Extruders" was presented at the AACC short course on extrusion in San Antonio, May, 1988.

"The Need for Continuing Education in Food Extrusion" was published in Food Engineering, September, 1988.

"A Simple, Qualitative, Model for Exploring the Effects of Twin Screw Extruder Configuration" was presented at the August 1988 meeting of the AIChE., in Denver, Colorado.

"Numerical Solution to a Problem in the Flow of Viscoelastic Fluid between Rotating Cylinders" was presented at the July, 1988 meeting of SIAM, in Minneapolis. Minnesota.

"Understanding Extruders" was published in Cereal Foods World, December, 1988.

"The Role of Rheology in Food Extrusion" was presented at the AACC short course on extrusion in Orlando, May, 1989.

"Use of Computer Vision for Real Time Determination of Volume Increase of Microwave Baked Products" was published in Cereal Chemistry, January, 1990.

"Some Aspects of Instabilities of Food Extruders" was presented, in August, 1990 at a symposium entitled "Extrusion Cooking and Rheology of Foods", sponsored by the Center for Advanced Food Research of Rutgers.

"The Fluid Mechanics of Cookie Dough Extruders" was presented at the Summer Meeting of the AIChE, Minneapolis, 1992 and published in the Journal of Food Process Engineering, September, 1992.

"Advances in Sheeting Operation Design Principles" was presented at the 1991 meeting of Research and Development Associates for Military Food and Packaging Systems. Boston, 1991, and published in Activities Report, Volume 44, No.1, 1992.

"A Comparison of Single and Twin Screw Extrusion" was presented at the AACC short course on extrusion in Grand Rapids, March, 1994.

"Understanding Extrusion" was presented at the AACC short course on cereal science and technology in Minneapolis, May, 1993.

"Cooking and Extrusion" was presented at the AACC short course on breakfast cereal technology, Minneapolis, November 1991.

"Principles of Continuous Sheeting & Laminating" was presented at the AIB short course on grain foods process systems technology, Manhattan, KS., June 1994

"Can Engineers and Food Scientist Communicate" was presented at the August, 1994 meeting of AIFST, Sydney, Australia.

"Estimating Sheeting Closing Forces from Power Measurements" has been published in the Journal of Food Process Engineering, April, 1996.

"Dynamics of Heat Transfer in Fryers/Kettles" was presented at the AIB short course on applied process technology, Kansas City, Sept. 1995.

"The Engineering Aspects of Differential Rolling Operations" is being prepared for publication and was presented at the 1995 meeting of COFE, Chicago and published in Cereal Foods World; August, 1996.

"Modeling in Process Development and Scale Up - An Engineer's Personal Perspective" was presented at the grand annual meeting of Society of the Chemical Industry, London, June, 1996.

"Advances in the Modeling of Dough Rolling Systems" was presented at the August, 1996 meeting of AIFST, Sydney, Australia.

"The Fundamentals of Dough Rolling Operations" has been published an AIB Technical Bulletin in August, 1998.

"A Preliminary Investigation of the Deformation of Cereal Pellets by Flaking Rolls" was published in

Cereal Foods World, June, 1997.

"Food Process Development and Scale Up Using Modeling and Simulation" was published in Chemistry and Industry, May, 1997.

"A Refinement of Sheeting Models: Accounting for Dough Compressibility", was published in Cereal Foods World, August, 1998.

"Avoiding Unsuccessful Scale Ups", was presented at the April, 1999 meeting of PMCA, Hershey, Pa. and was published in The Manufacturing Confectioner, June 1999.

"A Preliminary Investigation of the Mechanics of Cereal Flaking", was be presented at 6th COFE, AICHE National Meeting, Dallas, November, 1999, and published the proceedings of that meeting.

"Factors in the Performance of Dough Mixers" was presented at the AIB short course on dough processing technology, Kansas City, August, 1999.

"Dealing with Twin Screw Extruder Geometry" was presented at the Smart Extrusion Seminar sponsored by AFISC, Sydney, Australia, September, 1999.

"Scale Up:Pilot Plant to Plant was presented at the technical meeting of the Association for Dressings and Sauces, Baltimore, May, 2000.

"A Model Describing Finite Width Calendaring" is being prepared for Chemical Engineering Science.

"Sheeting/Rolling of Finite Width Sheets. Estimation of Final Sheet Width and Roll Forces and Power" was published in Cereal Foods World, February, 2001

"Attacking Scale Up Problems" was presented to the Australian Food Engineering Association, Sydney, March, 2001.

"Advances in Sheeting and Mixing Technology was presented at the International Wheat Quality Conference II, Manhattan, Kansas, May, 2001, and will be published in the proceeding of that meeting.

"Comparison of the Rheology of Regular and Reduced Calorie Pancake Syrups" has been submitted to the Internation Journal of Food Properties, June, 2001."

"An Engineering Analysis of the Residence Time Distribution of Preconditioners is being prepared for

Cereal Foods World.

"An Approximate Modeling for Estimating the Power and Closing Forces of Flaking Rolls" is being prepared for the Journal of Food Engineering.

"An Analysis Preconditioner of the Residence Time and Residence Time Distributions" is being prepared for Cereal Foods World.

"Tempering and Flaking" was presented at the AACC short course on breakfast cereal technology, Stuttgart, January, 2002.

The following texts have been, or are being authored.

"Food Processing Operations and Scale-up", with J. P. Clark and K. Valentas, has been published by Marcel-Dekker, New York in November 1990.

A chapter in "Extrusion Cooking", Edited by Drs. J. Harper and C. Mercier, has published by the American Association of Cereal Chemists, St. Paul, May 1989. A chapter on the sheeting and laminating of doughs, with B. Drew, in "Dough Rheology and Baked Product Analysis", edited by Dr. H. Faridi, has been published by Rheinhold/AVI, New York, October 1990.

A chapter on the integration of computers in food processing with S. Saguy, E. Rotstein, and S. Symes, has been published in "Biotechnology and Food Process Engineering" by the Institute of Food Technologist, Chicago, June, 1990

A chapter on extrusion in "Food Engineering Handbook" edited by Drs. D. Lund and D. Heldman has been published by Marcel-Dekker, New York, 1992

A chapter on dough processing in "The Handbood of Engineering Practice" edited by Drs. K. Valentas and E. Rothstein was published by Marcel-Dekker, New York, July, 1997.

A chapter on the rolling and laminating of cookie and cracker doughs, with B. Drew, in "The Science of Cookie and Cracker Technology", edited by Dr. H. Faridi, has been published by Chapman and Hall, New York, January, 1994.

A chapter on extrusion stability, with S. Symes, in Food Extrusion Science and Technology, edited by Drs. J. Kokini, C.T. Ho, and M.V. Karwe, has been published by Marcel Dekker, New York, December, 1991.

A chapter on cereal flaking in "Breakfast Cereals and How They are Made", Ed. II, edited by Dr. E Caldwell and R. Fast, has been published by the AACC, St. Paul, Minnesota, April, 2000.

A chapter entitled "Residence Times Distributions in Extruders" is being prepared for The Encyclopedia of Agricultural and Food Engineering, Marcel-Dekker, 2001.

The following patents have been obtained.

U.S. Patent #3,673,228, "Process for Bleaching of Edible Oils.

U.S. Patent #3,956,517, "Method of Forming Rippled Snack Products.

U.S. Patent #4,035,402, "Process for Dewaxing Vegetable Oils.

U.S. Patent #5,039,534, "Pea Separating Apparatus and Method of Use"

U.S. Patent #5,165,950, "Microwave Expandable Half Product and Process for its Manufacture"

#### Industrial Experience

Leon Levine & Associates, Inc.  
2665 Jewel Lane  
Plymouth, Minnesota

1/86- Consultant to food, pharmaceutical, cosmetics, and other consumer products companies.

The Pillsbury Company  
311 2nd Street SE  
Minneapolis, Minnesota

9/82- Senior Research Scientist, Consumer Engineering  
1/86

Primary responsibilities include functioning as an in-house consultant for the analysis and solution of problems in process design, scale-up, and start-up, and the demonstration of the feasibility of the application of new technologies. Major accomplishments include:

1. Demonstration of the feasibility of the

- application of machine vision for automated inspection.
2. Demonstration of an improved process for the preparation of sausage used for pizza manufacture.
  3. Demonstration of a process for the separation of popcorn for improved popping performance.
  4. Elucidation of the fluid mechanics involved in the sheeting of doughs and their implications on the behavior of dough products.
  5. Implementation of an improved method for continuous cleaning of frying oil.
  6. Demonstration of an improved method for forming snack bars.
  7. Solution of scale-up and start-up problems for a soft serve ice cream product.
  8. Demonstration of improved control techniques for the separation of peas before canning.
  9. Demonstration of methods for increasing the capacity of corn freezers.
  10. Implementation of a facility for on-site manufacturing of pasta at Green Giant facilities.

4/77-  
8/82      Senior Research Scientist, Research and Development

Primary responsibilities include the evaluation of new technologies and the improvement of existing processes and products. Major accomplishments include:

1. Reformulation and process improvements on ready to spread frostings.
2. Preparation of design criteria for American Beauty pasta manufacturing facilities and the implementation of design improvements.
3. Development of a package, its associated fabrication machinery and components for the improved microwave preparation of foods.
4. Demonstration of new process for the preparation of a quick cooking pasta product.
5. Solution of start-up and scale-up problems associated with Pasta Perfect.

1/76-  
3/77      Section Manager, Research and Development

Primary responsibilities were the supervision of a section charged with development of new products, and their associated processes, which were suitable for vending machine distribution. Major accomplishments include:

1. Preparation of design criteria for the production of popcorn, pizza, pancakes, and

desert products.

2. Development of the formulations for several varieties of pizza, pancakes, and deserts.
3. Demonstration of a novel package which improved microwave performance of crisp foods.

The Procter and Gamble Company  
6071 Center Hill Road  
Cincinnati, Ohio

6/72- Group Leader, Pringles Section  
12/75

Primary responsibilities included R&D liaison in the design of a new facility, solution of start-up problems, identifying and implementing processing and cost improvements, new product investigation, training of plant personnel, the preparation of manufacturing specifications, and the supervision of five professionals. Major accomplishments include:

1. Demonstration of a process for fabricating Pringle's extra.
2. Solution of numerous start-up problems.
3. Demonstration of new computer strategies for automatic control, including: feedforward control for raw material variations, on-line model identification, net weight control, material loss monitoring, and oil quality control.
4. Identification of new raw material supplies for improved cost and process control.
5. Demonstration of a process for recycling potato scrap

3/70- Group Leader, Fats and Oils Section  
6/72

Primary responsibilities included the investigation of new formulations, identifying and implementing cost and processing improvements, process start-up, and the supervision of one to two professionals. These individuals completed studies in the winterization, refining, filtration, and hydrogenation of vegetable oils and the synthesis of emulsifiers. This work lead to significant cost and capacity improvements. Major accomplishments include:

1. Development of a process for reclaiming spent frying oils.
2. Start-up of a large vegetable oil refinery.
3. Start-up of a new deodorization process.
4. Optimization of the formula for Puritan Oil.
5. Demonstration of a new process for dewaxing vegetable oils.

10/68- Process Engineer, Fats and Oils Section  
3/70

Primary responsibility was the development of new methods of vegetable oil processing. Major accomplishments include:

1. Demonstration of a new process for bleaching edible oils.
2. Demonstration of, and establishment of scale-up criteria for an improved process for the continuous hydrogenation of oils.

The First Machinery Corporation  
211 10th Street  
Brooklyn, New York

9/66- Design and Sales Engineer  
10/68

Responsibilities included the design of mixing equipment, limited shop supervision, and the sales of new and used processing equipment.

#### Additional Pertinent Experience

On-campus recruiter for The Pillsbury Company and The Procter and Gamble Company.

Have reviewed many articles submitted for publication in professional journals.

Extensive programing experience in FORTRAN, Pascal, BASIC, C, and Forth

#### References

Academic, industrial, and personal references will be provided upon request.

EXHIBIT B

43. A sealed crustless sandwich with a periphery and comprising:
  - a first bread layer having a first perimeter surface inward of said periphery; a central filling of an edible food in a defined area inside said first perimeter surface; a second bread layer juxtaposed to said central filling opposite to said first bread layer and including a second perimeter surface similar to said first perimeter surface;
  - a crimped edge free from any of said central filling and formed between said first perimeter surface and said second perimeter surface for sealing said central filling between said first bread layer and said second bread layer;
  - wherein the crust portions of said first bread layer and said second bread layer have been cut from said layers to define said periphery; said crimped edge comprising a surface-to-surface compression seal of said cut bread portions, said surface-to-surface seal being inward of said periphery of said sandwich and between said first and second perimeter surfaces of said bread layers wherein the central portion of said first and second bread layers inside said compression seal remains uncompressed, said compression seal of said crimped edge being such to expose said two cut bread layers around said periphery of said sandwich; and,
  - said central filling includes a layer of jelly sealably surrounded by two layers of peanut butter, both of said peanut butter layers having

perimeter areas outside said jelly layer, but inside said perimeter surfaces of said bread layers, with flat surfaces of said perimeter areas of said peanut butter layers facing each others, wherein said facing layers of said perimeter areas of said peanut butter layers are surface-to-surface sealed together to encapsulate said jelly layer, said surface-to-surface seal of said two peanut butter layers extending outwardly from said jelly layer toward said periphery of said sandwich.

44. A crustless sandwich as defined in claim 43 wherein said crimped edge includes a spaced depression in only one of said bread layers, said depressions forming pressure points in said surface-to-surface seal to prevent said crimp edge from separating at said surface-to-surface seal.

45. A crustless sandwich as defined in claim 44 wherein said depressions in said one bread layer are spaced inwardly from said periphery.

46. A crustless sandwich as defined in claim 45 wherein said sandwich is surrounded by a hermetically sealed package to extend storage time.

47. A crustless sandwich as defined in claim 44 wherein said sandwich is surrounded by a hermetically sealed package to extend storage time.

48. A crustless sandwich as defined in claim 43 wherein said sandwich is surrounded by a hermetically sealed package to extend storage time.

49. A sealed crustless sandwich as defined in claim 48, wherein said surface-to-surface seal of said crimped edge is spaced outwardly of said central filling.

50. A sealed crustless sandwich as defined in claim 44, wherein said surface-to-surface seal of said crimped edge is spaced outwardly of said at least one filling.

51. A crustless sandwich as defined in claim 50 wherein said depressions in said one bread layer are spaced inwardly from said periphery.

52. A sealed crustless sandwich as defined in claim 43, wherein said crimped edge is spaced outwardly of said central filling.

SMA-12271RX

EXHIBIT C

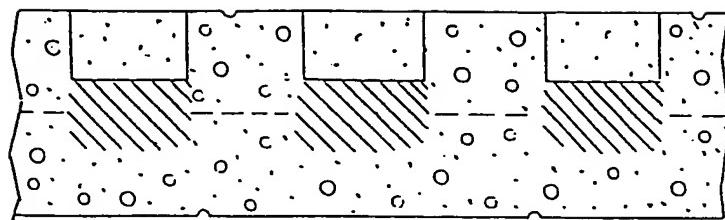


FIG. I

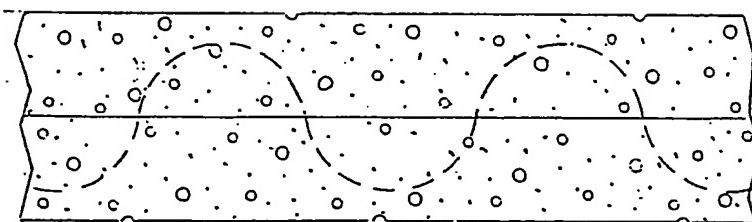


FIG. II

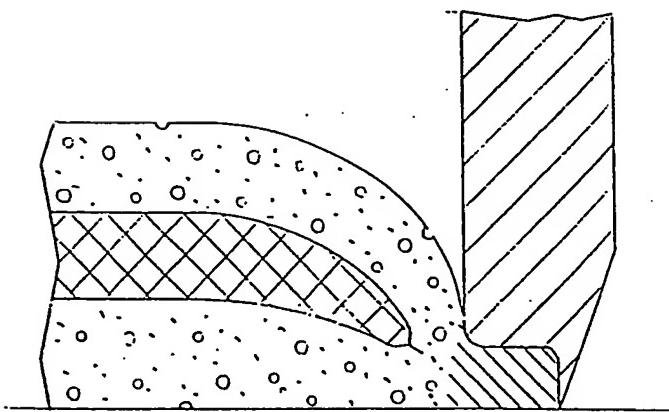


FIG. III

4,608,918

SMA-1227IRX

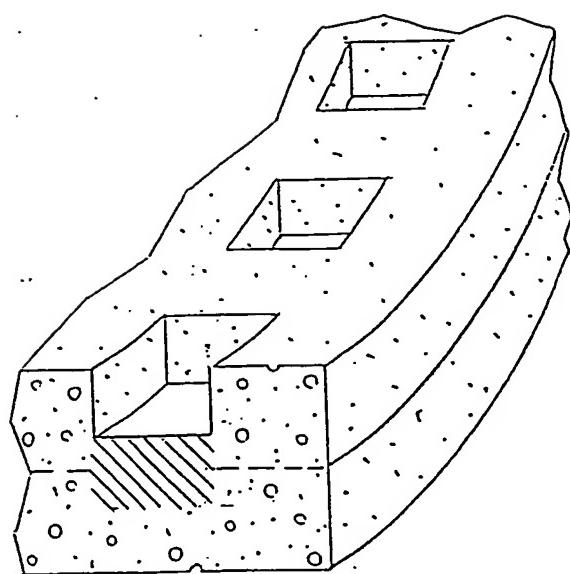


FIG. IV

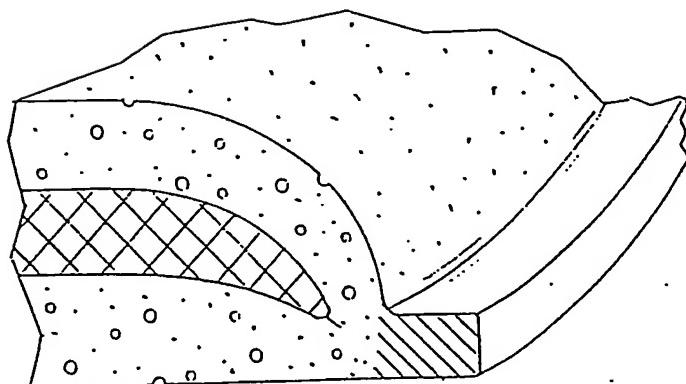
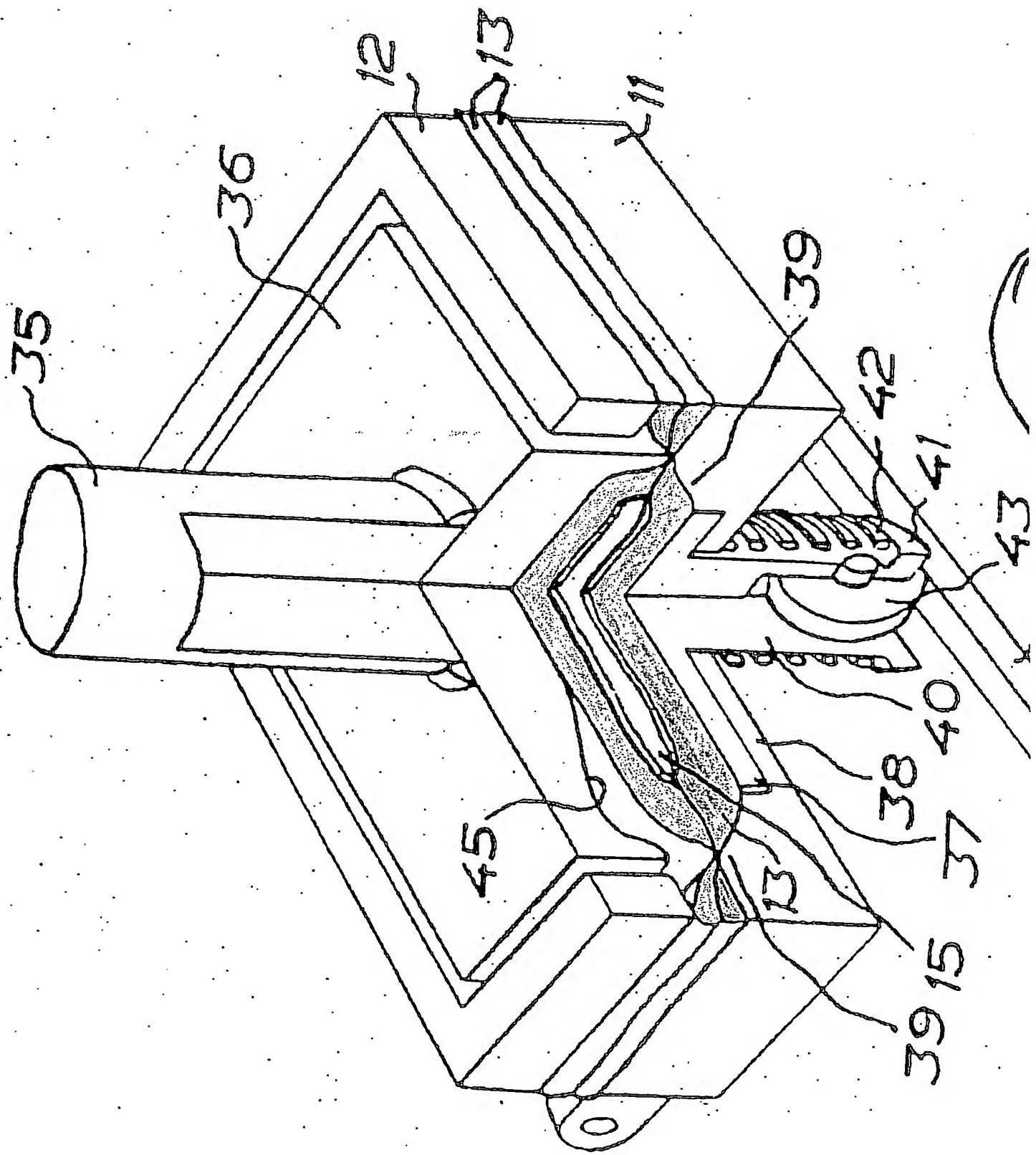


FIG. V  
4,608,918



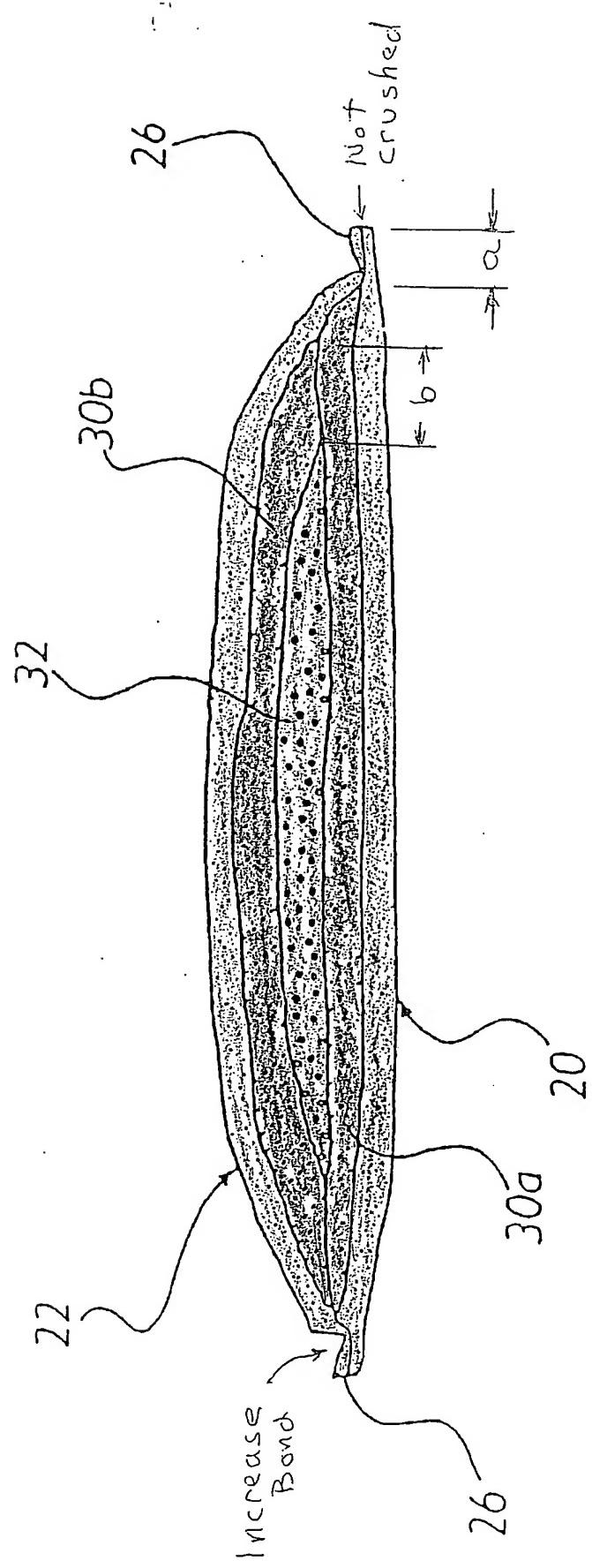


FIG. 4

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kretchman et al  
For : SEALED CRUSTLESS SANDWICH  
Serial No. : 09/404,701  
Filed : September 24, 1999  
Group Art Unit : 1761  
Last Office Action : January 19, 2001  
Examiner : Lien Tran  
Our Docket No. : SMA-12271-1

## DECLARATION OF MALCOLM COOKE

Malcolm Cooke, associated with the Department of Mechanical & Aerospace engineering at Case Western Reserve University being warned that willful false statements and the like are punishable by fine or imprisonment or both under 18 U.S.C. § 1001 hereby declares that all statements made of his own knowledge are true and any statements made on information and belief are believed to be true.

1. Attached hereto is my resume showing my expertise in the field of mechanical engineering.
2. I have reviewed the pages from The Pampered Chef brochure and pages from a book entitled *Pasta, Pies and Pastries* cited by the examiner in the above-identified matter.
3. I have also tested a unit like the Tartmaster sold by The Pampered Chef and shown

generally in Napolillo 2,765,755, but for a molding of uncooked dough preparatory to baking or cooking.

3. The illustrations by the publications of the "Tartmaster" being used with two slices of bread show pressure being applied by the hand to the central spring-loaded knob. As the knob is forced down, the crimping ring contacts the top slice of bread, the spring located between the body and the underside of the knob imparts a spring force to the outer ring causing it to begin penetrating the top slice of bread. The inner ring compresses the two slices until being stopped by the surface on which the two slices of bread have been placed. At this time all action is complete and increasing the force on the knob has no effect whatsoever. The "Tartmaster" uses what is regarded as a coupled design. This means that the actions of both cutter and crimping ring are dependent on one another. The coupling between the two actions being provided by the spring located between the underside of the knob and the top surface of the outer body.

4. Experiments by me using the "Tartmaster" show clearly that this only results in 'crimped' and partially cut pieces of bread. The resulting 'sandwich' is not cleanly separated from the bottom slice of bread and requires tearing loose from the bottom slice that damages and unseals the crimped edges.

5. The only force being applied to the outer ring of the "Tartmaster" is the force generated by compressing the spring located between the body and the underside of the knob. Experiments show that this force (controlled by the stiffness of the spring) is not sufficient to cause the outer body to completely and cleanly cut through the two slices of bread.

6. To cut cleanly through the two slices of bread the two actions, namely cut and crimp should be uncoupled. Then the elements are independent of one another to allow each operation

to be carried out separately. A different sequence of operations would be obtainable with an uncoupled design. A steady, continuous downward force could be applied to the periphery of the outer body until the cutting edge of the body is in contact with the surface on which the bread has been placed. This action will cause the outer ring to cut through the two slices of bread leaving cut portions. Then a downward force could be applied to the central crimping knob until again a firm resistance is experienced. This second action would force the inner ring onto the surface of the top slice of bread, compressing the two cut slices together and crimp the edges of the bread whilst the outer body keeps the cut portion centrally located. This action is not suggested by the "Tartmaster." The coupled actions are performed at the same time.

7. In summary, the design of the Pampered Chef "Tartmaster" is a coupled design.

- a. The cut and crimp or mold action of the device is dependent and takes place at the same time.
- b. The cutting force applied to the outer body ring is not independently applied, but is a function of the stiffness of the spring located between the underside of the knob and the top surface of the outer body ring.
- c. A varying downward force applied to the central knob of the device has no effect on the downward cutting force being applied by the outer body ring to the slices of bread.
- d. The operation of the coupled design dictates that the bread is first crimped during the initial cut phase and

then completely crimped. The outer body ring does not completely cut through the bottom slice of bread and is not positively or independently driven.

- e. To remove the sandwich from the two slices of bread requires tearing the slices of bread in order to free the sandwich.
- f. The removal action of the sandwich (e above) causes the edges of the sandwich to tear, thereby, unsealing and damaging the edge of the sandwich which would allow the filling to escape.

8. In my opinion neither the hand held

"Tartmaster" nor its operating action could be used for mass production of crustless sandwiches as contemplated by the above-identified application.

9. The process in the above-identified application requires an uncoupled mechanism.

- a. The cut and seal vertical action of the device is totally independent.
- b. A predetermined force is applied to the outer body ring independently to the predetermined force being applied to the internal ring.
- c. The operation sequence of the specification cuts the bread through by downward motion of the outer body ring. The sealing ring is then moved to completely

seal the edges of the cut portions. The action of both rings gives a cut and the seal process.

10. The attachment shows a process disclosed in the above-identified application. A person with ordinary skill in the mechanical engineering field would understand this disclosed method.

Date: 15 March 2001  
Cleveland, Ohio

Malcolm Cooke  
MALCOLM COOKE

CURRICULUM VITAE  
M. N. COOKE - B.Eng. (Hons), M.Sc. (Dist), Cert. Ed. (Dist)

**TITLE:**

Adjunct Assistant Professor, Director of Technical Support Services and Director of the Reinberger Product and Process Development Laboratory, Mechanical & Aerospace Engineering Department, The Case School of Engineering, Case Western Reserve University.

**CAREER:**

- 2000 - Adjunct Assistant Professor, Director of Technical Support Services, Director of the Reinberger Product and Process Development Laboratory, Mechanical & Aerospace Engineering Department, The Case School of Engineering, Case Western Reserve University, Cleveland, OH.
- 1999 - Adjunct Assistant Professor, Faculty Director of the Master of Engineering Programme, Mechanical & Aerospace Engineering Department, The Case School of Engineering, Case Western Reserve University, Cleveland, OH.
- 1998 - Director of Technical Support Services, Director of the Reinberger Product and Process Development Laboratory, Mechanical & Aerospace Engineering Department, The Case School of Engineering, Case Western Reserve University, Cleveland, OH.
- 1995 - 98 Senior Lecturer in Advanced Manufacturing, Director of the Reinberger Product and Process Development Laboratory, Director of Engineering Workshops, Mechanical & Aerospace Engineering Department, The Case School of Engineering, Case Western Reserve University, Cleveland, OH.
- 1994 - 95 Supervisor of EPSRC\* PhD. Research Student  
(\*Engineering and Physical Science Research Council), Coventry University, Coventry, UK.
- 1993 - 95 Program Manager for Higher National Diploma (HND) Manufacturing Systems Engineering and HND Manufacturing Management Courses, Coventry University, Coventry, UK.
- 1990 - 95 Senior Lecturer in Advanced Manufacturing, Coventry University, Coventry, UK.
- 1989 - 90 Senior Lecturer in Advanced Manufacturing, Huddersfield University, Huddersfield, West Yorkshire, UK.
- 1988 - 89 Warwick University - M.Sc. (Dist.) 'Information Technology for Manufacture', Warwick, UK.
- 1972 - 88 Lecturer/Senior Lecturer in Manufacturing, Henley College, Coventry, UK.
- 1969 - 72 Training Analyst, Brico Engineering Ltd., Coventry, UK.
- 1968 - 69 Machine Tool Fitter/Standards Engineer, Herbert Ingersoll Ltd., Daventry, UK.
- 1960 - 68 Mechanical Engineer, Courtaulds Engineering Ltd., Coventry, UK.
- 1960 - 68 Mechanical Engineering Apprentice, Courtaulds Engineering Ltd., Coventry, UK.

TEACHING INTERESTS:

CAD/CAM/CAE, Lean Manufacturing Strategies.

Application of information technology to the design and implementation of advanced manufacturing systems.

Rapid prototyping technology focused on biomedical applications.

RESEARCH INTERESTS:

The development of integrated strategies for the manufacture of biodegradable craniofacial prosthetic structures using 3D CAT/MRI data, CAD solid modelling and rapid prototyping technology.

The investigation into prosthetic joint design and material performance of total knee and hip joint implants to improve joint life.

PUBLICATIONS:

Cooke M (1989) The Use of Graphical Simulation for the Design of Automated Robotic Cells, Beijing, China, (Conference Proceeding)

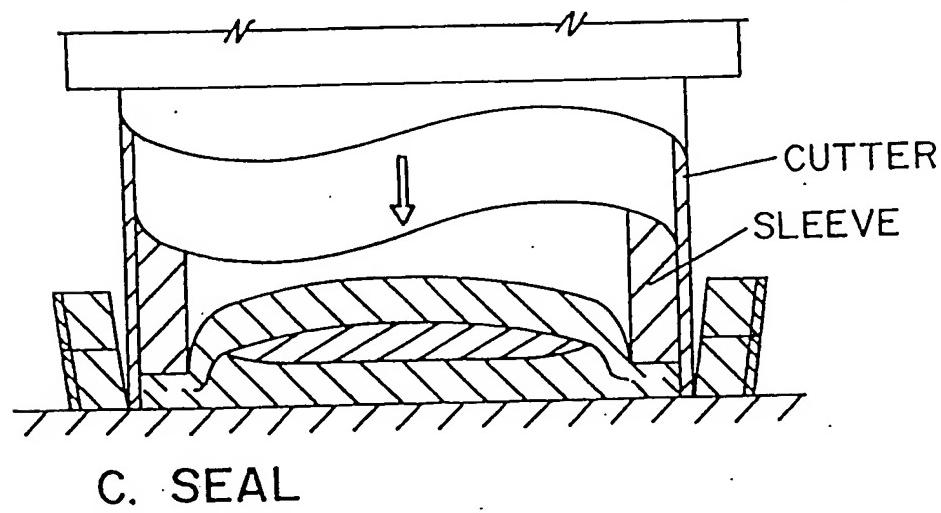
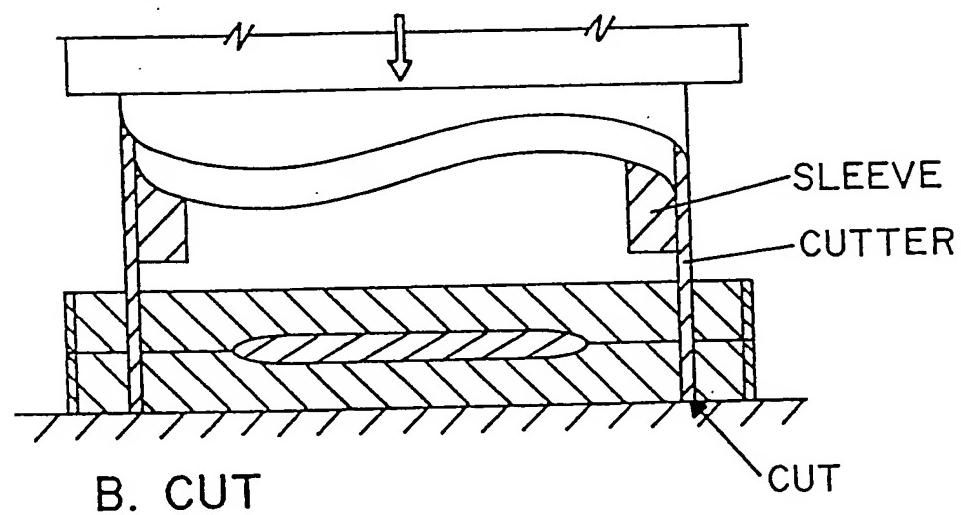
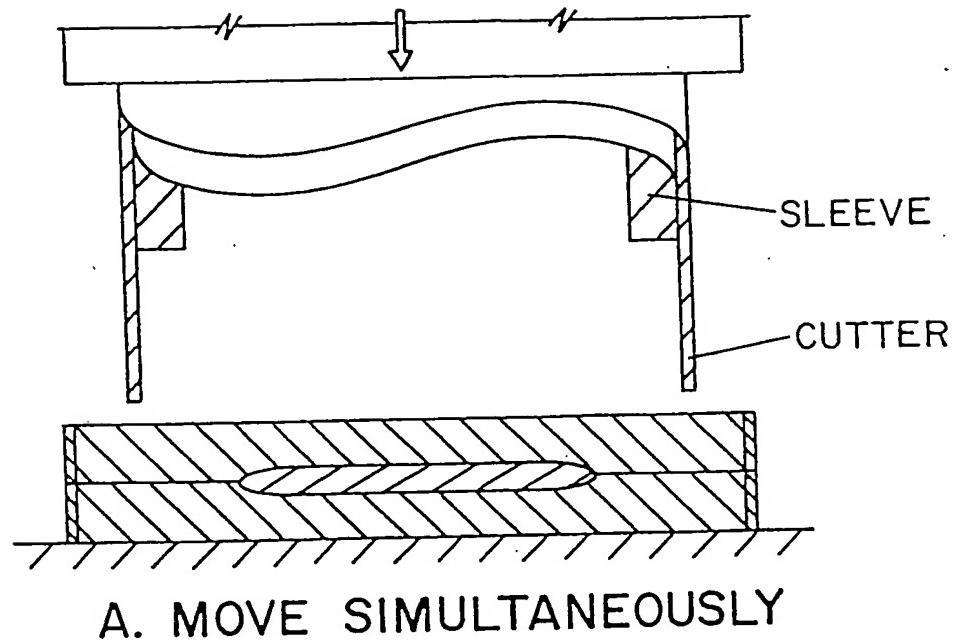
Lee Y-L, Cooke MN, Pennington DE, Jepsen KJ (1999) Alterations in Damage Mechanisms Contribute to Fragility in Two Genetically Distinct Inbred Mouse Strains. J Biomech.

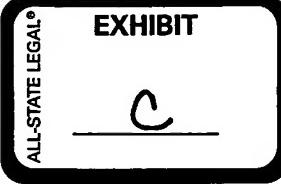
Dean D, Goldberg D, Topham N, Mikos A, Rimmac C, Jepsen K, Cooke M, Caplan A, Ratcheson R (to be published 2000) Rapid Prototyping of Neurocranial Prosthetics. Computer Assisted Surgery (CAS) & Rapid Prototyping in Medicine.

Cooke MN, Fisher MS, Rimmac C, Dean D, Mikos, A. (to be submitted) Stereolithographic Cross-Linking of a Biocompatible, Biodegradable Polymer, Poly(propylene fumerate), JBMR (Applied Biomaterials).

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E-mail:	mnc@mae.cwru.edu





PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kretchman et al  
For : SEALED CRUSTLESS SANDWICH  
Serial No. : 09/005,949  
Filing Date : March 9, 2001  
Patent No. : 6,004,596  
Gr. Art Unit : 1761  
Examiner : George C. Yeung  
Our Docket : SMA-12271 RX

**DECLARATION OF BRIAN E. TURUNG**

Asst. Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, Brian E. Turung, do hereby declare and say that:

1. I am an attorney at Vickers, Daniels & Young.
2. For purposes of the above-identified reexamination, I prepared several types of sandwiches and used the 3½ inch "Cut-N-Seal" sold by The Pampered Chef to attempt to form a crustless and sealed sandwich.
3. The "Cut-N-Seal" is illustrated in Exhibit A. The "Cut-N-Seal" includes a cylindrical housing base having a dome-shaped top. Four openings are located in the dome-shaped top, one central opening and three openings symmetrically spaced about the central opening. The "Cut-N-

"Seal" also includes a finger plunger having a partially spherical cap and a cylindrical rod connected to the inner bottom surface of the cap and extending through the central opening of the dome-shaped top of the housing base and threaded to a crimper located within the housing base. A spring is positioned between the inner bottom surface of the top and the top surface of the dome-shaped top which upwardly biases the plunger. The crimper includes a circular base having a diameter that is less than the inner diameter of the cylindrical housing base. On the bottom surface of the circular base is a number of nubs. A triangular support is secured to the top surface of the circular base at three symmetrically positioned regions. The top of the triangular support is threaded to the cylindrical rod of the finger plunger.

3. One of the sandwiches I made was a "Butter & Jelly" sandwich which is illustrated by the eight (8) pictures in Exhibit B. For this sandwich, I applied butter to both slices of bread. Upon information and belief, most butter and jelly sandwiches only have one side of one slice of bread buttered. As illustrated in the first and second pictures of Exhibit B, one side of each of the two slices of white bread was fully covered with Country Crock butter. After the butter layers were applied, one of the buttered surfaces of bread was substantially covered with Smucker's grape jelly. The thickness of the butter layer on each slice of bread was about 1/16 inch. The thickness of the grape jelly layer on one of the slices of bread was about 3/16 inch. After the grape jelly was spread on one of the slices of bread, the other slice of bread was inserted over the grape jelly layer such that the grape jelly was positioned between a butter layer on each slice of bread. The "Cut-N-Seal" was then positioned on the top surface of the upper bread layer, and was thereafter forced downwardly by applying a downward force on the top of the plunger cap. After the plunger cap of the "Cut-N-Seal" was depressed, the "Cut-N-Seal" was vertically lifted from the sandwich. As illustrated in the

fifth picture of Exhibit B, the "Cut-N-Seal" did not fully cut through the bottom slice of bread. In addition, the "Cut-N-Seal" caused the upper bread layer to rupture in several locations, thereby allowing the grape jelly to partially extrude through such ruptures. The ruptures in the upper bread layer were in part caused by the triangular support which is secured to the top surface of the circular base of the plunger depressing the top portion of the upper bread layer. The depressions caused by the triangular support are illustrated in pictures 5-8 of Exhibit B. The contact of the triangular support with the upper layer during the cutting and crimping of the sandwich at least partially caused the cavity of the sandwich which contained the butter and grape jelly to become restricted in size, thereby resulting in the grape jelly being at least partially forced through the upper bread layer.

4. Another sandwich I made was a "Peanut Butter & Jelly" sandwich which is illustrated by the six (6) pictures in Exhibit C. For this sandwich, I applied peanut butter to both slices of bread. Upon information and belief, most peanut butter and jelly sandwiches only have one side of one slice of bread layered with peanut butter. As illustrated in the first picture of Exhibit C, one side of each of the two slices of white bread was fully covered with creamy peanut butter by Harris Teater. After the peanut butter layers were applied, one of the surfaces of bread containing a layer of peanut butter was substantially covered with Smucker's grape jelly. The thickness of the peanut butter layer on each slice of bread was about 3/32 inch. The thickness of the grape jelly layer on one of the slices of bread was about 3/16 inch. After the grape jelly was spread on one of the slices of bread, the other slice of bread was inserted over the grape jelly layer such that the grape jelly was positioned between a peanut butter layer on each slice of bread. The "Cut-N-Seal" was then positioned on the top surface of the upper bread layer, and was thereafter forced downwardly by applying a downward force on the top of the plunger cap. After the plunger cap of the "Cut-N-Seal"

was depressed, the "Cut-N-Seal" was vertically lifted from the sandwich. As illustrated in the fourth picture of Exhibit C, the "Cut-N-Seal" did not fully cut through the bottom slice of bread. In addition, the "Cut-N-Seal" caused the upper bread layer to rupture in several locations, thereby allowing the peanut butter and grape jelly to partially extrude through such ruptures. The ruptures in the upper bread layer were in part caused by the triangular support which is secured to the top surface of the circular base of the plunger depressing the top portion of the upper bread layer. The depressions caused by the triangular support are illustrated in pictures 4-6 of Exhibit C. The contact of the triangular support with the upper layer during the cutting and crimping of the sandwich at least partially caused the cavity of the sandwich which contained the peanut butter and grape jelly to become restricted in size, thereby resulting in the peanut butter and grape jelly being at least partially forced through the upper bread layer. The rupturing problems of this sandwich were similar to the "Butter & Jelly" sandwich illustrated in Exhibit B discussed above.

5. Another sandwich I made was a "Standard Peanut Butter & Jelly" sandwich which is illustrated by the eight (8) pictures in Exhibit D. For this sandwich, I applied peanut butter to one side of one slice of bread. Upon information and belief, most peanut butter and jelly sandwiches are made in this manner. As illustrated in the first picture of Exhibit D, one side of one slice of white bread was fully covered with creamy peanut butter by Harris Teater. After the peanut butter layer was applied, the surface of bread containing the layer of peanut butter was substantially covered with Smucker's grape jelly. The thickness of the peanut butter layer on the slice of bread was about 3/32 inch. The thickness of the grape jelly layer on the slice of bread was about 3/16 inch. After the grape jelly was spread on the peanut butter layer, the other slice of bread was inserted over the grape jelly layer such that the grape jelly was positioned between a peanut butter layer and the bottom

surface of the upper slice of bread. The "Cut-N-Seal" was then positioned on the top surface of the upper bread layer, and thereafter a downward force was applied by grasping the sides of the cylindrical housing base and forcing downwardly the housing base. The housing base was partially rotated to try to ensure that the bottom bread layer was fully cut before crimping. After the housing base was forced downwardly and partially rotated, a downward force was applied on the top of the plunger cap to crimp the bread together. After the plunger cap of the "Cut-N-Seal" was depressed, the "Cut-N-Seal" was vertically lifted from the sandwich. This method of cutting and crimping the sandwich does not follow the instructions provided by The Pampered Chef for using the "Cut-N-Seal" that existed prior to the filing of the above-identified patent. However, subsequent to the filing and issuance of the above-identified patent, The Pampered Chef revised the instructions for the "Cut-N-Seal" to closely follow the procedure used to make the sandwich in Exhibit D. As illustrated in the third picture of Exhibit D, the "Cut-N-Seal" substantially fully cut through the bottom slice of bread. The "Cut-N-Seal" caused the upper bread layer to slightly rupture in several locations, thereby allowing the grape jelly to extrude through such ruptures. As with the other sandwiches, the ruptures in the upper bread layer were in part caused by the triangular support which is secured to the top surface of the circular base of the plunger depressing the top portion of the upper bread layer. The depressions caused by the triangular support are best illustrated in pictures 4-6 of Exhibit D. The contact of the triangular support with the upper layer during the cutting and crimping of the sandwich at least partially caused the cavity of the sandwich which contained the peanut butter and grape jelly to become restricted in size, thereby resulting in the grape jelly being at least partially forced through the upper bread layer. The rupturing problems of this sandwich were similar to the

"Butter & Jelly" sandwich and the "Peanut Butter & Jelly" sandwich illustrated in Exhibits B and C discussed above.

6. After several sandwiches were prepared, I obtained a box of Smucker's Uncrustables as illustrated in Exhibit E. The sandwiches were made from peanut butter and strawberry jam. The box included four (4) individually sealed sandwiches. None of the four (4) sandwiches had any ruptures in the bread layers as caused by the "Cut-N-Seal" device. One of the sandwiches was cut open. As illustrated in pictures 5 and 6 of Exhibit E, the sandwich included two layers of peanut butter encapsulating a layer of strawberry jam. Each of the layers of peanut butter appeared to be the same thickness and appeared to have a greater thickness than the strawberry jam layer. The edges of the layers of peanut butter terminated at a non-filling region where the two bread layers met. The width of this non-filling region was about equal in thickness to each of the slices of bread. The non-filling region then terminated at a crimped region of the bread layers. The thickness and width of the crimped region was less than the thickness of each of the slices of bread. The crimped region then terminated at a thin non-crimped region that defined the outer perimeter of the sandwich. This product was structurally the same as in Figures 3 and 4 of the above-identified patent.

7. After viewing the Smucker's Uncrustables sandwich and using the teaching of the above-identified patent, I attempted to duplicate such product by using the "Cut-N-Seal", and using the method taught in the above-identified patent. This sandwich was a modified version of the "Peanut Butter & Jelly" sandwich illustrated in Exhibit C. The modified version of the sandwich is illustrated by the eight (8) pictures in Exhibit F. One side of each of the two slices of white bread was partially covered with creamy peanut butter by Harris Teater. As illustrated in pictures 1 and 2 of Exhibit F, the peanut butter layer on each bread slice was positioned in the center portion of the

bread slice such that a wide outer perimeter of both bread slices did not include peanut butter. After the peanut butter layers were applied, one of the surfaces of bread containing a layer of peanut butter was partially covered with Smucker's grape jelly. As illustrated in picture 2 of Exhibit F, the grape jelly was carefully positioned in the center portion of the peanut butter layer such that an outer perimeter of the peanut butter layer did not include grape jelly. The thickness of the peanut butter layer on each slice of bread was about 1/16 inch. The thickness of the grape jelly layer on one of the slices of bread was about 1/8 inch. After the jelly was spread on one of the slices of bread, the other slice of bread was inserted over the grape jelly layer such that the grape jelly was positioned between a peanut butter layer on each slice of bread in an attempt to center the grape jelly in both layers of peanut butter. The "Cut-N-Seal" was then positioned on the top surface of the upper bread layer, and was thereafter forced downwardly by grasping the sides of the cylindrical housing base. As the housing base was being forced downwardly, the housing base was partially rotated to try to ensure that the bottom bread layer was fully cut before any crimping of the bread. After the housing base was forced downwardly and partially rotated, a downward force was applied on the top of the plunger cap to crimp the bread together. After the plunger cap of the "Cut-N-Seal" was depressed, the "Cut-N-Seal" was vertically lifted from the sandwich. As illustrated in the third and fourth pictures of Exhibit F, the "Cut-N-Seal" substantially fully cut through the bottom slice of bread. The "Cut-N-Seal" caused the upper bread layer to slightly rupture in several locations, thereby exposing the peanut butter layer; however, the grape jelly did not extrude through the peanut butter layer and bread layer. As with the other sandwiches, the ruptures in the upper bread layer were in part caused by the triangular support which is secured to the top surface of the circular base of the plunger

depressing the top portion of the upper bread layer. The depressions caused by the triangular support are illustrated in pictures 3-8 of Exhibit F.

8. I also attempted to make another sandwich similar to the Smucker's Uncrustables by using the "Cut-N-Seal", and using the method taught in the above-identified patent, which sandwich only included one layer of peanut butter. This sandwich was a modified version of the "Standard Peanut Butter & Jelly" sandwich illustrated in Exhibit D. The modified version of the sandwich is illustrated by the eight (8) pictures in Exhibit G. One side of one slice of white bread was partially covered with creamy peanut butter by Harris Teater. As illustrated in the first picture of Exhibit G, the peanut butter layer on the bread slice was positioned in the center portion of the bread slice such that an outer perimeter of the bread slice did not include peanut butter. After the peanut butter layer was applied, the surface of bread containing the layer of peanut butter was partially covered with Smucker's grape jelly. As illustrated in picture 2 of Exhibit G, the grape jelly was positioned in the center portion of the peanut butter layer such that an outer perimeter of the peanut butter layer did not include grape jelly. The thickness of the peanut butter layer on the slice of bread was about 1/16 inch. The thickness of the grape jelly layer on the slice of bread was about 1/8 inch. After the jelly was spread on the slice of bread, the other slice of bread was inserted over the grape jelly layer such that the grape jelly was positioned between the peanut butter layer on one slice of bread and the bottom surface of the upper slice of bread. In this arrangement, the grape jelly was not encapsulated between the two layers of peanut butter. The "Cut-N-Seal" was then positioned on the top surface of the upper bread layer, and was thereafter forced downwardly by grasping the sides of the cylindrical housing base. As the housing base was being forced downwardly, the housing base was partially rotated to try to ensure that the bottom bread layer was fully cut before crimping. After the

housing base was forced downwardly and partially rotated, a downward force was applied on the top of the plunger cap to crimp the bread together. After the plunger cap of the "Cut-N-Seal" was depressed, the "Cut-N-Seal" was vertically lifted from the sandwich. As illustrated in the fourth picture of Exhibit G, the "Cut-N-Seal" substantially fully cut through the bottom slice of bread. The "Cut-N-Seal" caused the upper bread layer to slightly rupture in several locations, thereby exposing the grape jelly, thus allowing the grape jelly to partially extrude through such ruptures. As with the other sandwiches, the ruptures in the upper bread layer were in part caused by the triangular support which is secured to the top surface of the circular base of the plunger depressing the top portion of the upper bread layer. The depressions caused by the triangular support are illustrated in pictures 4-7 of Exhibit G.

9. Exhibit H is a recent advertisement by The Pampered Chef for the "Cut-N-Seal." The new advertisement sets forth four (4) steps to form a pocket sandwich by use of the "Cut-N-Seal." Step one instructs the user to form an indentation or cavity in the bottom layer of the bread with the palm of the hand and then place one tablespoon of filling in the indentation. The concept of forming an indentation in the bottom bread layer for receiving a filling was first disclosed by Applicant in the above-identified patent. Step three instructs the user to grasp the base of the "Cut-N-Seal", not the plunger, and then press down firmly and twist to cut through the bread. After the bread has been cut, step three instructs the user to press down the plunger to crimp and seal the filling. Prior instructions by The Pampered Chef instructed the user to depress the plunger to both cut and crimp the pastry as in Napolillo 2,765,755 (Exhibit J). This device is constructed like the "Cut-N-Seal" with the center triangle frame. The concept of separately cutting and crimping the sandwich was first disclosed by Applicant in the above-identified patent. The recent modifications by The

Pampered Chef to the "Cut-N-Seal" advertisement reflect The Pampered Chef's copying of Smucker's unique and novel method of making Smucker's Uncrustables sandwiches that are the subject of the above-identified patent.

10. The sandwiches illustrated in Exhibits D, F and G were formed using step three of The Pampered Chef advertisement illustrated in Exhibit H. One final sandwich was made which controlled the amount of grape jelly used in the sandwich. The Pampered Chef advertisement indicates that one tablespoon of filling should be used. In the sandwich illustrated in the seven (7) pictures of Exhibit I, one tablespoon of grape jelly was measured as illustrated in the second picture. Only one slice of bread was partially covered with peanut butter as illustrated in the first picture of Exhibit I. The sandwich was essentially made in the same manner as the sandwich illustrated in Exhibit G. As with the other sandwiches, the upper layer of bread ruptured to partially allow the grape jelly to extrude through the rupture.

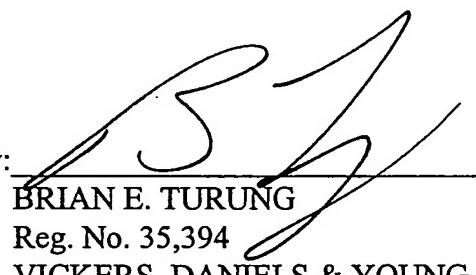
11. Although I tried to duplicate the Smucker's Uncrustables sandwich using "Cut-N-Seal" by The Pampered Chef, as also shown in Napolillo 2,765,755, none of the sandwiches I made included the structure of the Smucker's Uncrustables sandwich illustrated in Exhibit E. As stated above, all of the sandwiches I made included several ruptures in the upper bread layer. None of the Smucker's Uncrustables sandwiches included any ruptures. I also could not form a sandwich using the "Cut-N-Seal" wherein the edge of the layer of peanut butter terminated at a non-filling region where the two bread layers met, which non-filling region had a width that was about equal to thickness of each of the slices of bread. As illustrated in Exhibits G and I, there is no non-filling region. The peanut butter and jelly extend to and are part of the crimped region of the sandwich. Indeed, the several regions of the Smucker's Uncrustables sandwich that encircle the peanut butter

and jam filling are not formed the same, nor even exist in sandwiches formed using the "Cut-N-Seal."

I hereby declare that all statements made herein of my own knowledge are true, and all statements made on information and belief are believed to be true and further state that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001 and may jeopardize the validity of this document.

Date: 1/30/02

By:

  
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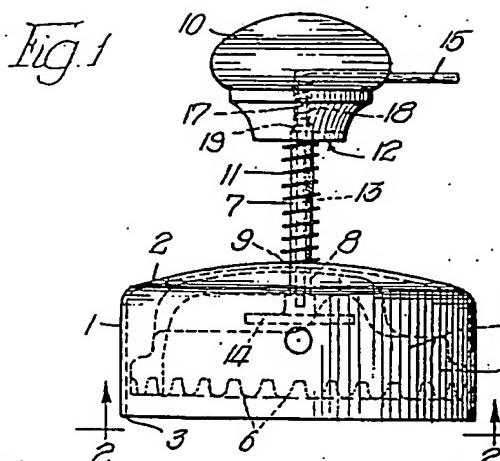
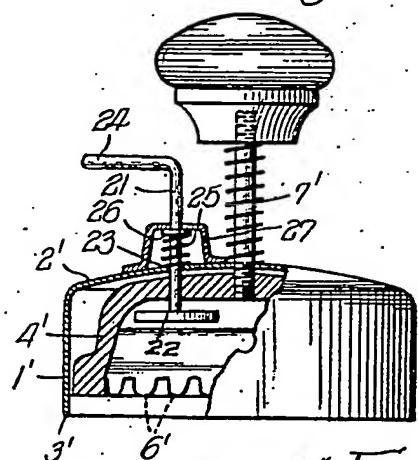
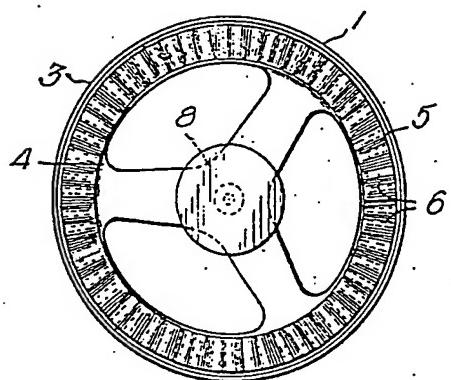
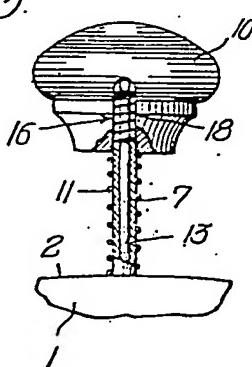
Oct. 9, 1956

A. NAPOLILLO

2,765,755

CULINARY MOLD

Filed July 12, 1954

*Fig. 2**Fig. 4**Fig. 5*

INVENTOR  
Angelo Napolillo,  
BY  
Brown, Jackson, Botteler, Dierus  
Attn:

# United States Patent Office

2,765,755

Patented Oct. 9, 1956

1

2,765,755

## CULINARY MOLD

Angelo Napolillo, Evergreen Park, Ill.

Application July 12, 1954, Serial No. 442,853

2 Claims. (Cl. 107—47)

This invention relates, in general, to a culinary mold, and more particularly to a culinary mold for cutting edibles such as ravioli, pies, cookie dough, biscuits and material of similar character to a desired configuration and for impressing a desired design on the molded article.

The present invention may be characterized as an improvement on the devices disclosed in my prior Letters Patent No. 2,106,057, granted January 18, 1938, for "Cooking Tools," and in my prior Design Patent No. 114,900, granted May 23, 1939, for "Culinary Mold."

One of the main objects of the present invention is to provide an improved mold comprising an outer body having a peripheral cutting edge; a mold member movable in said outer body and provided with a molding face having a configuration thereon to be imparted to the molded article; and ejector means for ejecting the cut and molded article from the outer body and the mold member.

Another object is to provide a mold of the character described wherein, by depression of a finger piece, the mold member is depressed into cooperation with the material and the cutting edge simultaneously depressed to cut the article to the desired peripheral outline, and wherein there is separately operable means for ejecting the cut and molded article from the outer body and the mold member.

Another object is to provide a mold of the character described wherein the ejector has a stem extending through a tubular stem for the mold member, and more particularly wherein the ejector stem has a laterally turned outer end for engagement by the hand of the operator and operable in a slot in a finger piece on the stem for the mold member.

Another object is to provide a mold of the character described wherein the ejector stem is spaced laterally from the axis of the stem for the mold member.

Another object is to provide a mold of the character described which will be portable and manually operable; also highly efficient in use and economical in manufacture.

Further objects and advantages of the invention will appear from the following detailed description taken in connection with the accompanying drawing, in which:

Figure 1 is a side elevational view of one form of culinary mold embodying the present invention;

Figure 2 is a bottom plan view of the mold taken substantially on the line 2—2 of Figure 1;

Figure 3 is a fragmentary elevational view, partially broken away and in section, looking at the handle or finger piece for the mold member at substantially right angles and from the right as the device is shown in Figure 1;

Figure 4 is a side elevational view, partially broken away and in section, of another form of mold embodying the present invention; and

Figure 5 is a view similar to Figure 3 showing another modification.

2

Referring now to the drawing, the embodiment of the invention illustrated in Figures 1-3 comprises an outer cylindrical body 1 formed, for example, of relatively thin metal. This outer body 1 has an end wall 2 at one end and its opposite end is open and provided with a peripheral cutting edge 3.

A mold member 4 formed, for example, of light weight metal, such as aluminum or the like, has a cylindrical rim 5 which fits loosely for movement in the outer mold body 1. The ring 5 has a molding face presented toward the open end of the body 1 on which there is a configuration 6 in the form, for example, of radial scallop forming fingers for imparting a scalloped or other desired configuration to the molded article.

15 A first stem 7 of tubular form is fixedly attached at its inner end to the radially armed integral hub 8 of the body 1, for example, by threaded engagement therewith, and extends outwardly for rectilinear movement through an opening 9 in the end wall 2. A finger piece 10 mounted on the outer end of the stem 7 is effective when depressed to depress the mold member 4 into cooperation with the material to be molded to impress upon the molded article the scallops or other configuration on the molding face. A first coiled spring 20 11 interposed to act between the end wall 2 and an abutment 12 formed on the stem 7 by the inner end of the finger piece 10 is effective upon depression of the finger piece 10 to depress the cutting edge 3 into and through the material to cut the article to the desired peripheral outline. Upon release of the finger piece 10 the spring 25 11 is effective to move the mold member to a retracted position within the outer body 1 and to retain same in such retracted position.

30 A second stem 13 has an ejector disk 14 suitably fixed on its inner end and extends outwardly through the tubular stem 7. The stem 13 has a laterally turned outer end 15 for engagement by the hand of the operator, and which is operable in a slot 16 in the finger piece 10. The finger piece 10 is recessed at 17 to provide space for a second coiled spring 18 which surrounds the stem 13 and is interposed to act, for example, between the inner end of the laterally turned end 15 of the stem 13 and a shoulder 19 formed, for example, at the inner end of the recess 17. The spring 18 may, if desired, be sufficiently lighter or weaker than the spring 11 to permit depression of the stem 13 for ejecting the article without appreciably or substantially depressing the mold member 4.

If desired, the ejector spring 18 may be omitted and the ejector actuated manually to projected and retracted positions with means such as a lateral notch at the outer end of the slot 16 into which the lateral extension 15 of the stem 13 may be turned to retain the ejector stem 13 in retracted position.

55 In operation, the user places the mold in position with the cutting edge 3 directed downwardly upon the material from which the article is to be cut. The finger piece 10 is then depressed, thereby depressing the mold member 4 to impress upon the article the configuration on the molding face and simultaneously to depress the cutting edge 3 into and through the material to cut the article to the desired peripheral configuration. Upon completion of the molding and cutting of the article, the finger piece 10 is released and the first spring 11 moves 60 the mold member 4 to retracted position within the outer body 1 and retains same in such position.

Then by depressing the second finger piece 15 the ejector disk 14 is depressed and ejects the molded and cut article from the outer body 1 and the mold member 4.

The lateral notch 16' at the outer end of the slot 16' as shown in Figure 5, which corresponds to the slot

16 of Figure 3, acts to hold the stem 13' which corresponds to the stem 13 of Figure 3 in retracted position where the spring 18 of Figure 3 is omitted and the ejector is manually retracted. The laterally directed outer end 15' of the stem 13' is merely turned into and out of the lateral notch 16" to hold the ejector in released position and to release the same.

The mold shown in Figure 4 is similar to the mold shown in Figure 3, except that the second stem 21 with its ejector disk 22 are spaced laterally from the stem 7' which may be of solid form since the stem 21 does not extend therethrough. The stem 21 extends outwardly for rectilinear movement through a second opening 23 in the end wall 2', and has a laterally turned portion 24 forming a finger piece for manually depressing the stem 21 and ejector disk 22 to eject the article from the outer body 1' and mold member 4'. A second spring 25 interposed to act between the end wall 2' and a pin or abutment 26 on the stem 21 is effective when the ejector stem 21 is released to move the ejector to retracted position and maintain same in said position. The spring 25 is confined in an inverted generally U-shaped bracket 27 attached to the end wall 2'. The stem 21 has rectilinear movement through an opening in the outer wall of the bracket 27.

The embodiments of the invention shown in the drawing are for illustrative purposes only, and it is to be expressly understood that said drawing and accompanying specification are not to be construed as a definition of the limits or scope of the invention, reference being had to the appended claims for that purpose.

I claim:

1. A culinary mold for cutting and molding articles from suitable material comprising, in combination, an outer body having an end wall at one end and open at its opposite end with a peripheral cutting edge at said open end, a mold member having movement in said outer body and provided with a molding face having a configuration thereon to be imparted to the molded article, a first stem attached at its inner end to said mold

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member and extending outwardly for rectilinear movement through an opening in said end wall, a finger piece having a recess therein on said first stem and effective when depressed to depress said mold member into cooperation with the material to impress upon the article the configuration on said molding face, a first spring embracing said first stem and interposed between said end wall and an abutment on the outer end of said first stem, said spring being effective upon depression of said finger piece to depress said cutting edge into and through the material to cut the article to the desired peripheral outline and effective upon release of said finger piece to move said mold member to retracted position within said outer body, a second stem extending outwardly through said first stem and having at its inner end an ejector and extending outwardly for rectilinear movement through said end wall, and a second spring positioned in the recess in said finger piece and effective when said second stem is released to maintain said ejector in retracted position within said mold member, said second stem being effective when depressed to depress said ejector to eject the cut and molded article from said outer body and said mold member.

2. A culinary mold according to claim 1 wherein said first stem is of tubular form and said second stem extends outwardly through said tubular first stem and has a laterally turned outer end for engagement by the hand of the operator and operable in a slot in the finger piece on said first stem.

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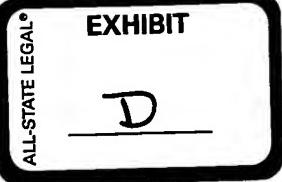
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808,015	Coppins	Dec. 19, 1905
35 2,137,811	Royal	Nov. 22, 1938
2,314,401	Johnson	Mar. 23, 1943

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825,442	France	Mar. 3, 1938
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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kretchman et al  
For : "Sealed Crustless Sandwich"  
Serial No. : 90/005,949  
Filed : March 9, 2001  
Patent No. : 6,004,596  
Examiner : George C. Yeung  
Group Art Unit : 1761  
Our Docket No. : SMA-12271 RX

DECLARATION  
(STEVEN T. OAKLAND)

Steven T. Oakland, Vice President and General Manager - Foodservice Market of The J. M. Smucker Company, being warned that willful false statements and the like are punishable by fine or imprisonment or both under 18 U.S.C. § 1001 and that such willful false statement and the like may jeopardize the validity of this document or any patent resulting therefrom, declare that all statements made of my own knowledge are true, and any statements made on information and belief are believed to be true.

1. I am involved in the marketing of a product known as the Uncrustables. (the "Product").
2. This Product is constructed as shown in United Sates Letters Patent No. 6,004,596.
3. The Product is the fastest growing product of The J. M. Smucker Company in the last many years. Such growth in this highly competitive market can only be explained by the merits of

the Product.

4. The Product has been introduced to schools and clubs. Due to its high demand, the product is now being sold in national grocery outlets.

5. In the short time of sales, sandwiches have been sold with sales of over 50,000,000 sandwiches at a price of over \$15,000,000.

6. The Product does include the spaced apart depressions to increase the bond of the crimped edge and the peanut butter layers are sealed around the jelly. The peanut butter and jelly version is the basis of the commercially successful Uncrustables.

7. After introduction of the Product, companies learning about its success are now copying the Product. Thus, sales by others would need to be added to the sales volume of the Product to which the claims of Patent No. 6,004,596 are directed.

Date: 7/16/01



STEVEN T. OAKLAND

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kretchman et al  
For : "Sealed Crustless Sandwich"  
Serial No. : 90/005,949  
Filed : March 9, 2001  
Patent No. : 6,004,596  
Examiner : George C. Yeung  
Group Art Unit : 1761  
Our Docket No. : SMA-12271 RX

**DECLARATION OF STEVEN T. OAKLAND**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, Steven T. Oakland, made the declarations dated March 5, 2001 and July 16, 2001 related to commercial aspects of the Uncrustables brand crustless sandwich sold by The J. M. Smucker Company (Smucker) and shown in Figures 3 and 4 of Kretchman 6,004,596. I confirm my knowledge of duties and responsibilities under 28 U.S.C. § 1001. I further declare.

1. The crustless sandwich is a food item which has not been advertised by Smucker other than a general amount.
2. It is my understanding that the Patent Office believes the success of the Uncrustables brand product may have been based upon:

- (a) heavy promotion
- (b) shift in advertising
- (c) consumption of jelly by Smucker
- (d) extraneous events.

3. None of the above factors account for the high sales in a short time of the Uncrustables brand product.

4. It is my experience children do not care about the items listed above when eating a crustless sandwich as disclosed in Kretchman 6,004,596. If it is not liked, it will not be purchased again. My experience and declaration facts address the concerns of the Patent Office. Millions of crustless sandwiches consumed primarily by children is not based upon any dominate fact, except they like the product. The price of the sandwich, does not change the acceptance by a child.

5. Smucker has committed a new line to make the Uncrustables brand crustless sandwich. This would not have been done without existing commercial success.

6. Since January 1, 2001, over 48 million Uncrustables brand sandwiches were sold.

Date:

2/28/02



STEVEN T. OAKLAND

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kretchman et al

For : "Sealed Crustless Sandwich"

Serial No. : 90/005,949

Filed : March 9, 2001

Patent No. : 6,004,596

Examiner : George C. Yeung

Group Art Unit : 1761

Our Docket No. : SMA-12271 RX

**DECLARATION OF STEVEN T. OAKLAND**

Steven T. Oakland, made the declarations dated March 5, 2001 and July 16, 2001 and February 28, 2002 relating to commercial aspects of the Uncrustables brand crustless sandwich sold by The J. M. Smucker Company (Smucker) and shown in Figures 3 and 4 of Kretchman 6,004,596. I confirm my knowledge of duties and responsibilities under 28 U.S.C. § 1001. I further declare.

1. The number of school districts purchasing the Smucker crustless sandwich sold under the Uncrustables brand is over 3000. This figure was conveyed to Mr. Purcell under my direction by March 1, 2002. Sales to such districts since January 1, 2001 are over 37 million sandwiches.

2. It is my understanding that the school district number and volume was used by Mr. Purcell in forming an opinion of substantial acceptance. I agree with this opinion.

3. Sales of over 50,000,000 crustless sandwiches was a number provided by Smucker to Mr. Purcell before March 1, 2002.

4. I agree with the opinion of Mr. Purcell that the sales of the crustless sandwiches by Smucker establishes commercial success of the sandwiches constructed as shown in Figures 3 and 4 of Kretchman 6,004,596.

Date: 3/21/02

  
\_\_\_\_\_  
STEVEN T. OAKLAND

PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of : Len C. Kreichman et al

For : "Sealed-Crustless Sandwich"

Serial No. : 90/005,949

Filed : March 9, 2001

Patent No. : 6,004,596

Examiner : George C. Yeung

Group Art Unit : 1761

Our Docket No. : SMA-12271 RX

DECLARATION OF JOHN PURCELL

I, John Purcell, being warned that false statements and the like are punishable by fine or imprisonment or both under 13 U.S.C. § 1001 hereby declares that all statements made of his own knowledge are true and any statements made on information and belief are believed to be true.

1. Attached hereto as Exhibit A is my biography showing my qualifications to testify on items in this declaration.

2. I am familiar with the crustless sandwich sold by The J. M. Smucker Company under the trademark "Uncrustables." This product is now on the shelves of major retail stores, such as Kroger, Giant Eagle, etc. Dedication and retention of shelf space in such major grocery stores is evidence of the commercial success of a food product.

3. I have been told that the Uncrustables crustless sandwich have been accepted by many school districts throughout the United States as a snack and lunch item. I have knowledge of

how school districts select and purchase food items. From this experience, I have comprehensive knowledge of food items purchased in K-12 school systems throughout the United States. I have worked with procurement directors and offices in hundreds of K-12 systems over the past 25-years as an expert consultant in their large scale purchasing for school children. One criteria used by the districts is the demonstrated ability of the food items to be immediately acceptable to a major percent of the students. This required qualification is a strict, two tier test, including professional dietitians and the students. [This test is more difficult for a food item to meet than mere retail acceptance of traditional retail food items. The "Uncrustables" has conformed to this high level of commercial success by being sold to hundreds of school districts. I have been informed that 3,000 districts have purchased over 37 million Uncrustables brand sandwiches since January 1, 2001. This is substantial acceptance.

4. The Uncrustables brand snack food is shown in cross-section in Exhibit B (this cross section is not part of this document). This size is about four inches in diameter for both retail and school districts. As can be seen, the two bread layers are sealed around the outer perimeter area, with a surface-to-surface bread seal that does not crush the bread into a compacted mass. The bread retains its fresh consistency. This can be tested by anyone purchasing a package of Uncrustables, which are available nationwide. Maintaining the bread in its conventional, fresh state is important to commercial acceptance. The jelly layer is captured between two layers of peanut butter that are also sealed together around a perimeter area. The peanut butter surface seal is between the jelly and the outer seal of the bread. This construction allows the crustless sandwich to duplicate a home made peanut butter and jelly sandwich while allowing a seal of the central filling without damage to the conventional bread consistency. This novel construction accounts for widespread acceptance

of this food item in demanding school programs, as well as in the highly competitive retail grocery trade. Anyone reading this declaration can independently verify my analysis by merely shopping at the large chain neighborhood grocery store and tasting an Uncrustables brand crustless sandwich.

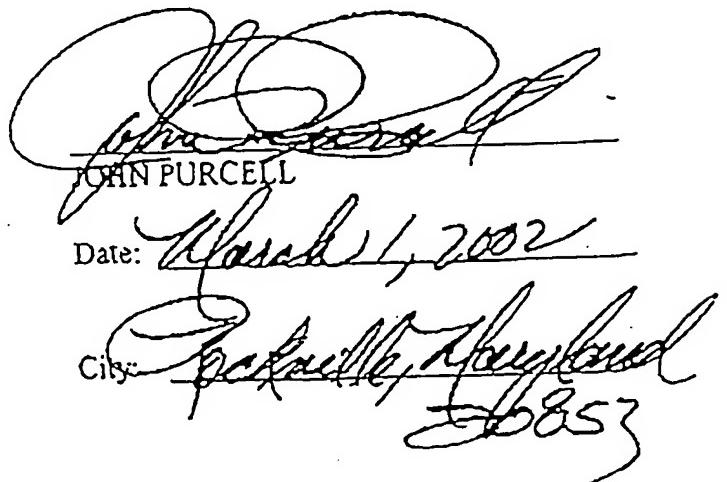
5. I have been told that attached claims 43 and 44 (Exhibit C) are, or will be, before the United States Patent and Trademark Office (PTO). I believe these claims define the "Uncrustables" now being sold.

6. The Uncrustables product is a crustless sandwich. It is not a pastry dessert, such as strudel, nor a health food item, such as a fruit bar with a pastry shell, nor a candy, such as Hershey bar, nor a meat sandwich, such as a hamburger. The market for the Uncrustables brand crustless sandwich is unique. It is a peanut butter and jelly sandwich. It competes for satisfaction of the consumers' hunger with only the combined sale of a jar of peanut butter, a jar of jelly and a loaf of bread. I know of no market share data in this competitive area. Of course, the Uncrustables brand sandwich would compete with a preformed commercial peanut butter and jelly sandwich; however, I know of no such retail product. In summary, the "Uncrustables" brand sandwich defines its own market and has a vast majority of the market share.

7. It is my understanding that the Uncrustables brand product was immediately accepted by professionals in school administrations and by marketing people operating retail outlets. This acceptance was without massive advertising. In the retail trade, a product will not be allocated shelf space unless it sells well, i.e. it is commercially successful. Commercial success of a snack food item is sales volume. It is my understanding that the yearly sales of the Uncrustables brand exceed 50,000,000 crustless sandwiches. These sandwiches are defined by claims 43 and 44. The reason

for these large sales is the construction of the crustless sandwich. No amount of advertising would force a child to eat this product if it were not tasty and like a homemade peanut butter and jelly sandwich. I do not believe a plain sandwich with a layer of peanut butter and jelly between two slices of bread could be successfully marketed even though it would be classified as a peanut butter and jelly sandwich. I know The J. M. Smucker Company (Smucker) to be a prudent, successful company marketing fruit products and snack items. It is my understanding that Smucker has brought on line a facility to make 100,000,000 crustless sandwiches per year. This commitment would not be feasible if the Uncrustables crustless sandwich was not commercially successful.

8. In summary, the Uncrustables brand crustless sandwich as defined in claims 43 and 44 has created a market and has become successful to both professionals and retail customers in a short time without massive advertising. I am not a lawyer, but in the food industry such success is commercial success.

  
JOHN PURCELL  
Date: March 1, 2002  
City: Packerville, Maryland  
50853

# CVS/Purcell

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## Biography

John R. Purcell is a partner in CVS/Purcell, a research and consulting firm that specializes in the development of comprehensive Non-Commercial Foodservice systems based on the myriad federal statutory and regulatory policies. CVS/Purcell works with a number of Foodservice Manufacturers providing a wide array of special functions using Federal regulations to the advantage of both the manufacturers and their end-user customers in the Non-Commercial segments. Some of the firm's clients include Tyson Foods, Land O'Lakes, The Dannon Company, Campbell/Taggart, Gorges/Quik-to-Fix and many others. John works closely with State Government and Local officials who administer units of governments such as school districts to build foodservice systems that are state-of-the-art. He has a great deal of hands-on experience over the past twelve-years ranging from R&D at the manufacturer level through the design and implementation of customized training of Regional Sales managers and brokers in techniques to capture larger volumes at higher margins with all of the segments in the Non-Commercial Markets.

Prior to his current work, John was the Director of Federal Relations (lobbyist) for the 95,000-member National School Boards Association in Washington, D.C. In that role, he was responsible for the legislative and executive branch initiatives that affect the day-to-day operations of public schools nationwide. Schools in the United States represent a market of more than 60-million meals per day and a total economic force of more than \$300-billion annually. His responsibility allowed him to work with other Washington associations, many of whom represent foodservice manufacturers.

Before going to Washington as a Post-Doctoral Federal Policy Fellow under the Carter Administration, he spent more than ten years in the academic world. His original focus was to become a university professor in business. He earned his Ph.D. from the University of Michigan as a Charles Stewart Mott Fellow. He earned his Master's Degree from the University of Kansas as a Mobil Oil Fellow and his Bachelor of Arts degree from Salisbury University (part of the Maryland University System).

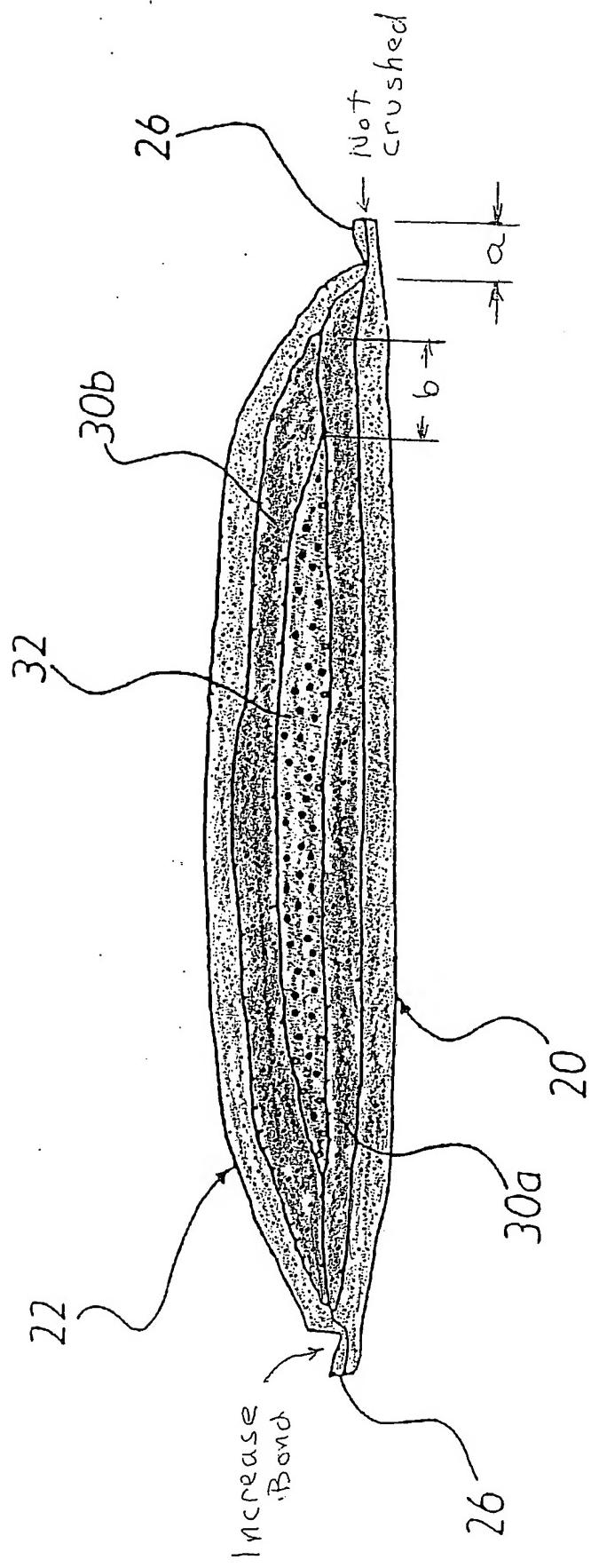


FIG. 4

43. A sealed crustless sandwich with a periphery and comprising:
  - a first bread layer having a first perimeter surface inward of said periphery; a central filling of an edible food in a defined area inside said first perimeter surface; a second bread layer juxtaposed to said central filling opposite to said first bread layer and including a second perimeter surface similar to said first perimeter surface;
  - a crimped edge free from any of said central filling and formed between said first perimeter surface and said second perimeter surface for sealing said central filling between said first bread layer and said second bread layer;
  - wherein the crust portions of said first bread layer and said second bread layer have been cut from said layers to define said periphery; said crimped edge comprising a surface-to-surface compression seal of said cut bread portions, said surface-to-surface seal being inward of said periphery of said sandwich and between said first and second perimeter surfaces of said bread layers wherein the central portion of said first and second bread layers inside said compression seal remains uncompressed, said compression seal of said crimped edge being such to expose said two cut bread layers around said periphery of said sandwich; and,
  - said central filling includes a layer of jelly sealably surrounded by two layers of peanut butter, both of said peanut butter layers having perimeter areas outside said jelly layer, but inside said perimeter

surfaces of said bread layers, with flat surfaces of said perimeter areas of said peanut butter layers facing each others, wherein said facing layers of said perimeter areas of said peanut butter layers are surface-to-surface sealed together to encapsulate said jelly layer, said surface-to-surface seal of said two peanut butter layers extending outwardly from said jelly layer toward said periphery of said sandwich.

44. A crustless sandwich as defined in claim 43 wherein said crimped edge includes a spaced depression in only one of said bread layers, said depressions forming pressure points in said surface-to-surface seal to prevent said crimp edge from separating at said surface-to-surface seal.

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